



NACDL Testimony

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Testimony by NACDL member, Jack Zimmermann, before the House Waco Investigative Committee

July 1995

Written Opening Statement of Jack B. Zimmermann

Dear Members of the Oversight Committees:

On the afternoon of April 19, 1993, just after the tragic fire, I began calling for Congressional hearings into the conduct of all parties involved in the Waco matter. It is gratifying that you are conducting an investigation, so that this nation can avoid repeating what happened at Mt. Carmel in 1993. As a democratic country, we must learn from these events so that the same result will not occur should there be a similar situation in the future.

Within weeks of the fire, as one of two non-law enforcement, non-Branch Davidians to personally inspect the inside of Mt. Carmel Center and interview Branch Davidians who are now deceased, I wrote down my thoughts in an opinion piece entitled "[The Legacy of Waco: The Demise of ATF and FBI Integrity.](#)" I recorded my thoughts and observations, fresh in my mind then after only a few weeks had passed, and I made certain predictions.

I choose to use "[The Legacy of Waco](#)" as my opening statement here, and will add the enclosed [Update](#), based on events which developed or were released after the original writing in May 1993.

Very respectfully,

Jack B. Zimmermann

THE LEGACY OF WACO: THE DEMISE OF ATF AND FBI INTEGRITY

May 1993

America was fascinated by what appeared to be a number of "firsts" seen on our television screens from Waco: ATF agents in combat gear smashing a window and entering a building to shoot at people shooting back; media reports that a fellow was claiming to be Jesus Christ, and had over a hundred followers who were resisting calls to surrender; a siege of an American home and church by FBI agents, driving military armored personnel carriers and tanks; the largest encampment of television, radio, newspaper, and magazine reporters in recent memory; men, women, and children leaving the home, with the adults later appearing in jail suits, chained at the wrists, waist, and ankles; a new vocabulary: "compound" instead of home, "cult" instead of religious group, "religious fanatics" led by a "false messiah" instead of dedicated followers of a charismatic teacher; defense lawyers going inside the surrounded home to advise the two leaders of the group to come out; the news that someone was going to reveal the secrets of the Bible's Seven Seals; the image of an American armored tracked vehicle smashing through the living room door of an American home; and the horrible scene of a wooden building containing over 90 human beings consumed by an inferno, with only nine adults able to escape.

These unfortunate mental images raised many questions, but very few satisfactory answers have come to light. On one side, citizens asked: Why did this "cult" exist in the first place? Why did they amass so many weapons and so much ammunition? Were the weapons all legal, or did they in fact convert legal weapons into illegal ones? Why did the men, women, and children remain so under the control of the leader? Why weren't the children sent out once the siege began? Why didn't they all come out when they said they would? Were the lawyers used as a stalling tactic? Was the decoding of the Seven Seals ever begun at all? Did everyone commit mass suicide? Were some people murdered to prevent their escape?

Other citizens asked: Why was it necessary for the ATF to mount a paramilitary assault using automatic weapons and grenades to serve an arrest and search warrant? Why was 9:30 on a Sunday morning chosen as the time of the raid, a time when all adults who worked away from Mt. Carmel were at home, as were the school-age children? Why didn't they arrest Koresh on one of his frequent trips to jog or go into town? Why did the AFT shoot five Malamute dogs and let them whine and cry within sight and hearing of the children until their pets eventually died? Why did the FBI use psychological warfare "torture" techniques such as blaring at night sounds of rabbits being slaughtered or a phone off the hook, at a building containing over two dozen children? Why as the children watched were their bicycles and tricycles crushed by the FBI armored vehicles? Why did the FBI publicly announce that they had all the time that was necessary to resolve the matter peacefully, but then launch a physical assault by armored tracked vehicles tearing away huge portions of the building? Why did the FBI deliver typewriter ribbons on Sunday afternoon so the Seven Seals could be typed, then attack twelve hours later with five minutes warning? Why did the FBI use debilitating CS gas, banned for use by military

combatants against enemy soldiers, knowing there were 17 young children inside who were too small to have gas masks that could fit? Why did the FBI need to smash the structural integrity of the clapboard building, collapsing walls, ceilings, and roofs in order to insert CS gas? Did the FBI forget that they had cut off the electricity for over a month, and the light sources inside the building were Coleman camping lanterns burning fuel? Did the FBI forget that bales of hay — which were extremely flammable — were placed at most windows to protect the inhabitants from cold, rain, and wind? Did the FBI not know that the weight of a multi-ton armored vehicle would shake the earth, the flimsy foundation, and the structure of the building itself — especially once it penetrated the building? Did the FBI forget that there were dozens of one-gallon cans of lantern fuel, a generator with stored fuel, and other flammable liquids and propane gas inside? Did the FBI not calculate that a spark from the armored vehicle crushing metal inside the building, or knocking over a lighted lantern, would immediately start fires wherever the sparks flew? Did the FBI forget to calculate the effect on a small flame of 30 mile per hour winds whipping through gaping holes in the structure? Did the FBI, which had placed the hospitals, the neighbors, and the media encampment on alert, forget to bring the fire department up before running the risk of fire? Why was the fire completely out of control before fire trucks arrived? Once the stair wells collapsed, and people were trapped in the upstairs interior rooms, how were they supposed to exit to avoid the CS gas, even if they wanted to and no fire existed? Why was the building destroyed? Why did the children die?

Some of these questions can never be answered. To me, as an American citizen, there are even more troubling questions: Was there enough danger to society posed by the Branch Davidians to justify a military assault, or did their "offbeat" religious voices subject them to a different test by the authorities? Why did the Justice Department feel compelled to put a cover-your-ass spin on every development before the facts were known? Examples: within 35 minutes, the Justice Department announced from Washington that two "cultists" confessed to starting the fire. By that night, after everyone in the country who had followed the fire was enraged that the children were murdered by their parents, the truth was released: No one had confessed to any such thing. How many heard the retraction? Then that same night, the Attorney General made the talk show rounds, claiming 1) they had hard intelligence that the children were being beaten during the previous week or so and were living in horrible hygienic conditions, 2) the FBI agents were becoming fatigued, and 3) the Davidians weren't ever coming out voluntarily. Thus, the "non-aggressive action" was authorized. I call a tank smashing into a living room extraordinarily aggressive. But the spin experts succeeded: "Child abuse: Kill the bastards. Go get 'em! Why did you wait so long?"

The next day after the fire, Dick DeGuerin and I had a chance to respond in behalf of our now forever silenced clients. What "intelligence" of recent child abuse existed? I challenged the FBI and Attorney General to release the so-called intelligence - after all, we had seen the adults and children only days before, and had talked to most of the survivors: The children were not being beaten, and they were well-fed, well-clothed, and clean. The next day, the FBI fessed up: "We did not tell the Attorney General there was evidence of abuse during the siege; we passed on the 1992 reports from last year." Who in the public heard that retraction? Very few. The damage to truth-finding was done: Child abusers deserve to die, even if the horrible fire that killed them

consumed the children, too. "By God, we destroyed the children to save them. They're better off now." I point out to you: at 6:00 AM on April 19th the kids were alive and physically well, although I'm sure they were emotionally scarred by their experience of being sprayed by thousands of rounds of ATF ammunition in February and weeks of ear-splitting nonsense blared night and day by the FBI, but they were alive. By 1:00 PM they had been burned alive.

There is a cruel streak in the country. Some of the public — and some of our leaders — seem to be gleeful over the incinerated Branch Davidians. The cruelty that has been reported to me numbs my faith in humanity. I have gotten many, many phone calls and letters since April 19, and over 91% support our efforts to get to the truth. But I have also learned that some people watching television on April 19 as the fire killed the children were actually cheering. Others have commented, "I support the FBI, why didn't they do this sooner?" "David Koresh was a nut, and federal agents had been killed. They all deserved to die." Unbelievable. The final tragic mockery of justice occurred when a high official in our government with responsibility for the attack decision received the support of her superior and co-workers by a public announcement of "That-a-girl!" Eighty-six incinerated human beings, and we Americans react by saying, "That-a-girl" or "That-a-boy"? Unbelievable.

The terrible loss of life outside of Waco was bad enough, but for the country, there may be an even worse loss. We saw our respected governmental agencies flounder, then try to cover their tracks. We should all be concerned about the following developments.

The Intentional Use of "Misinformation" to Mold Public Opinion

Within a short period, high public officials, public relations officers and press secretaries were misleading the public. Their initial claims are followed by their later admissions, retraction, or obvious errors.

The ATF did not alert the press before the February 28th attack. The media was called several days in advance by an ATF spokeswoman.

The ATF did not lose the element of surprise. The undercover operative (known to be an ATF agent by the Branch Davidians) reported to his supervisors that a tip had been received an hour or more before the attack.

Two "cultists" confessed to starting the fire on April 19th. Withdrawn as inaccurate, because no such confession occurred.

The April 19th operation was a "non-aggressive" action. Once the nation saw tanks crashing through walls and ripping out windows, even the FBI began to call it an "assault."

The Justice Department could not wait another day because the children were being beaten during the siege. Two days later the FBI reported the information given to the Attorney General was the old information from 1992, not current intelligence.

It was a planned mass suicide. Every survivor vehemently denied any plan for a mass suicide. Nine people fled the flames — they didn't commit suicide, yet remain totally committed to their leader. The "leaders" were found in one room, and the 80 or so others spread throughout the building. Not exactly a mass suicide scenario.

They murdered people who wanted to escape by shooting them. The survivors reported that no such thing occurred. As of this date, most autopsies are complete, and only some reveal gunshot wounds. Remember, six people were killed by ATF gunshots on February 28th. Dick DeGuerin and I saw several on April 1 and April 4 (we did not take a count) who still had ATF bullets in them, but had recovered. The ones found with gunshot wounds included David Koresh — the one who was alleged to be killing the others! No one will know for sure, but it probably was a case of people being trapped unable to escape a fiery hell, and some chose to end the suffering by taking their own lives — hardly a "mass suicide" or "murdering those who wanted to escape."

David Koresh was not working on his Seven Seals project - it was a sham. Three survivors who had been kept apart before speaking to Dick DeGuerin and me, reported personally working on the preparation of the First Seal, and that it had been completed in typed form Sunday night, while David Koresh was dictating the Second Seal to women who had worked before as secretaries.

The Government had gone in on both February 28th and April 19th because of child abuse occurring. Perhaps no one will ever know the answer for sure, but the public was not told that the 1992 allegations were investigated by the Child Protective Services and no evidence of abuse was found. The local sheriff agreed. Further, the children who came out after the ATF attack were reported to be healthy and not victims of child abuse.

Failure to Have an Independent Review, AKA "Cover Your Ass"

In the first few hours after the April 19 holocaust, sensing public outrage, high government officials promised an independent, impartial, outside investigation. That sounded reassuring, causing most of us to think, "Well, let's wait to see what the facts are." But almost immediately (within a day or two), the spectre of cover-up began to surface. Prior to April 19, by agreement of all concerned — ATF, FBI, state officials, and the lawyers for the Branch Davidian leaders — it had been decided that no federal agents would be involved in the "crime scene" investigation once everyone was safely out and the scene secured. Instead, an agency with no axe to grind was to conduct the investigation, the Texas Rangers, an elite component of the Texas Department of Public Safety. Yet, on the very first controversial issue — how the fire was started — the feared "spin" was set in place. Instead of bringing in a totally independent team of experts from any

number of unbiased fire departments from the nation's major cities, the man chosen to report to the Attorney General and head the group was only three years out of the Houston ATF office which had major planning and execution responsibility for the failed raid on Mt. Carmel on February 28, 1993. Instead of having the report viewed as credible, it was tainted before it was released, its results "a foregone conclusion" given the close ties its leader had to one of the federal agencies under the spotlight. Those ties include the following indicia of "neutrality": his work space (office, telephone, mail) from 1982-1990 was in the Houston ATF office, as evidenced by his business card from that period; during that period he identified himself to witnesses verbally and with his card as an ATF Special Agent arson investigator; he went to the funeral of the Houston ATF agent slain in the February 28th raid; and he was then and is currently married to a secretary working in the Houston ATF office. The fire was on a Monday. The Saturday of that week he had asked Dick DeGuerin to meet on Monday to help in the investigation, since Dick DeGuerin and I were the only non-Branch Davidians who had been inside and were able to describe the possible flammable conditions. His report was to be released Wednesday. Dick DeGuerin and I were to leave Sunday night at 6:30 to go to Waco. Over the weekend, it was confirmed that this "independent" investigator had been a de facto ATF agent. When Monday came, he was told that since he had such close ties to the ATF that unless the Texas Rangers asked us to participate, Dick DeGuerin and I would not lend our credibility to the anticipated report. In response, he called an unscheduled press conference for that same day, and announced that the fire was started by the "cultists." Surprise! Surprise! Of course, the reasons for the fire he described coincide with what the survivors told Dick DeGuerin and me, as well as with our recollection of the inside and our review of the videotapes of April 19. With the site now bulldozed over, the true origin of the fire will never be known for sure.

Failure to Complete an Accountability Review

High officials have publicly stated "every aspect, from top to bottom," will be reviewed. That is needed, of course. But it is not enough. Those bureaucrats who made the horrible errors in judgment must be held accountable — just saying "I'm sorry, I did the best I could" is not good enough. Because no matter how you cut it, no matter who did what when — on February 28, 1993, over 130 people were living in an isolated religious community not harming anyone. Even if the claim is true that some possessed destructive devices, that is a 10 year maximum penalty offense. By April 19, 1993, close to 100 people — including law enforcement agents and babies — were dead. For what? Those responsible for the crucial decisions at each juncture should be removed from positions where their deficient judgment could result in a similar disaster in the future.

The Failure of Congress to Conduct Complete Hearings

As of this writing, only the House Judiciary Committee has even convened a session, but it could hardly be called an "investigation." The only persons called as witnesses were the ones whose conduct should be under scrutiny. Only one side was heard. Except for a very few notable exceptions, the committee members almost injured each other clamoring to see who could praise the witnesses most and first. Where are the tough questions? Where are the only witnesses who were inside Mt Carmel, who saw the results of the ATF raid and of the FBI negotiation tactics, and who have interviewed the survivors of the fire as well as many who died in the fire? Why haven't Dick DeGuerin and myself been called to present the view of witnesses who do not work for the agencies under investigation, who no longer have clients in existing court cases, and who have personal knowledge not possessed by any other living human beings?

The Underlings Will Take the Fall

ATF: The young men and women who participated in the February 28th attack were executing orders. They are not trained in the "law of war," and could not be expected to recognize the illegality of the orders to open fire on pregnant women and unarmed children. Their loss should be mourned. Their leaders should be held accountable. They wanted to look and act like military personnel — so let's take the military analogy one step further. Had this been an operation by a military unit which had failed so miserably, the commander on the scene would have been immediately relieved of command, and would be under investigation for a possible court-martial for dereliction of duty. His superior officer would be walking very gingerly, as would that officer's superior. The careers of each of those in the chain of command would and should be over. **FBI:** I admire the courage of the Special Agents on the ground. I am convinced from my meetings with these men that they truly wanted a peaceful resolution. Evidence: they authorized the extraordinary step of permitting Dick DeGuerin and me to visit face-to-face with our clients. The theory was to build trust as only a criminal defense lawyer can do with one suspected of crime, and then to assure those inside that they would not be executed the minute they set foot outside the Center. We were independent of the FBI. On opposite sides. But we shared a temporary mutual goal: a peaceful resolution of the stand-off, and moving the confrontation to the courthouse. Frankly, I thought there was a mutual respect, even if we disagreed on certain matters (like playing the ear-splitting noises so the children could not sleep). Make no mistake, I do not think the on-scene FBI leaders intended to kill those inside. After all, their mission was clear: perform damage control for the mess created by the ATF and reach a peaceful resolution. The April 19 result was total failure for the FBI, any way you cut it. It is the blackest mark in the history of this proud organization. Cynics might say that the obvious pain in Bob Ricks' voice at the post-fire briefing was caused by the realization that his career progression was over. I don't think so. Unless I just totally misjudged him, I think the pain was real and was caused by the realization that innocent men, women, and children were among the incinerated. As a professional law enforcement agent, that troubled him. Cops don't often fret over harm to the guilty, but good cops want to protect the innocent — certainly from death without due process, especially by burning. But I'm afraid the fault for the totally incompetent decision made to destroy the building itself (as opposed to the decision to use gas) which led to the fire, no matter who started it, will be laid at the feet of the men on the ground in Waco. That is wrong. The

desk-bound Washington bureaucrats made that decision, but I predict none of their heads will fall. The public ought not accept such an outcome.

The Branch Davidians had mothers, fathers, grandparents, brothers, and sisters. The demonization of the entire religious group by our government officials is tragic, and caused unnecessary and deep pain to the families. I have spoken in person and by telephone to these grieving family members, and it is heart-wrenching. They loved their sons, daughters, siblings. The Branch Davidians included decent, loving people who were committed to a religious faith that in this country they had every right to practice. The Steve and Judy Schneider I met and spoke to at length were decent, intelligent, articulate people in their early forties, who were well groomed, polite, and pleasant hosts. It was remarkable how composed they were, given that there were military tanks and armored vehicles rolling up to their house daily, they had no electricity, their two year old daughter was kept awake by the FBI loud speakers at all hours, and the lack of trust in the FBI they had carried over from the fact that an unarmed Judy had been shot by the ATF in the hand (as she held her hand next to her face pulling aside a curtain to see what the commotion was outside her window).

The truly tragic ending is made worse because they were coming out peacefully. Steve Schneider told me at every contact we had that the entire group wanted to come out. They wanted the truth about February 28th to be told. They were not going to surrender until they felt their God indicated his approval, and then only if the FBI would honor its commitment to have the procedure include Dick DeGuerin and myself, for their protection. They were suspicious of "the beast" [the established government], and, as it turned out, for good reason. But on April 1, 1993, they told Dick DeGuerin and me that they agreed with our advice to come out that day, but they needed to satisfy both the secular law and the scriptural law. They told us they could not come out until after Passover (a high holy week to them), and then when they received word that their waiting period was over. On April 4, 1993, we discussed legal documents including setting up a trust for David Koresh's children, protecting the title to Mt. Carmel so no one could claim it was abandoned when everyone came out, and legal fee agreements for Dick DeGuerin and myself. These are not matters one discusses if set on suicide. We were so sure they were coming out that we left drafts of our fee letters, telling them to make corrections and we would retype them when they came out. When Dick DeGuerin and I talked to them on the day after Passover — April 14, 1993 — they were ecstatic: They had received the clearance they had been waiting for, and they were coming out when the secrets of the Seven Seals were reduced to written explanation. This news was put in a letter, sent out that afternoon. A copy was given to the FBI; the contents released by permission to the press. At a day or two per Seal, it was going to be over in about two weeks or less. The survivors told us that David Koresh told all inside to prepare to go to court, that they were coming out when the Seals were decoded. April 14th was a Wednesday. The FBI waited Thursday, Friday, and Sunday (everyone knew no work could be done on Saturday, their Sabbath): After three work days, the First Seal was in final form, and the Second was under preparation. After the Attorney General had made the decision on Saturday to attack at dawn on Monday, on Sunday night typewriter ribbons were delivered by the FBI to the Center. Everyone was excited, knowing that the ribbons meant they would soon be leaving Mt. Carmel.

These religious people woke up Monday morning to armored vehicles smashing into their home, and gas that caused coughing, burning of the eyes and nose, and vomiting, being injected into their bedrooms. So much for trusting the government. Until the questions asked earlier are answered, Americans are going to have a hard time trusting their government.

Jack B. Zimmermann is a board certified criminal law trial lawyer from Houston. A decorated Marine Vietnam combat artillery officer, he is now a Colonel assigned as a Reserve general court-martial judge. Mr. Zimmermann represented Steven Schneider, David Koresh's second-in-command.

Update to the Legacy of Waco

July 1995

Any thorough criminal defense lawyer tries to corroborate with independent evidence the facts that a client relays. We did so in this case as follows:

- Dick DeGuerin and I had been told on April 1, 1993, that Wayne Martin had called 911 at the outbreak of the shooting. When the 911 tapes were released, that was in fact exactly what had happened.
- We had been told by many people inside Mt. Carmel that the first shots had come "from outside from the left," aimed at where David Koresh had been standing after he had opened the door. When we checked that double door, made of metal, the spray pattern on the right side as you face the doors from the outside was consistent with what we were told. When interviewed at length by the Texas Rangers in July 1993, both Dick Deguerin and I described that door, and I strongly suggested that the Rangers inspect that evidence. I was told it was intact, and they had it. However, at the trial, the crucial right door, made of metal, was not available. Where was it? It could not have been burned. Its disappearance raises serious suspicions about the integrity of the post-fire investigation and the prosecution of the survivors.
- We had been told by many people inside Mt. Carmel that shots had been fired from a helicopter. We were shown holes in the ceiling of the fourth floor bedroom of David Koresh, which appeared to us to be exit holes in the ceiling, meaning the rounds entered the bedroom from the outside. That evidence was burned. However, on February 28, 1993, within minutes of the occurrence, on the same 911 tape where Wayne Martin is frantically seeking help from the Sheriff's Department, Steve Schneider's voice is heard in the background saying, "Another chopper with more people and guns going off, here they come. They're firing!" He didn't

know Wayne Martin was on the telephone talking to 911, and he was being recorded.

- The ATF had announced that there would be no question about who fired first because the initial raid had been videotaped. On April 6, 1993, I filed a motion to preserve that tape and all other audio or video tapes. That was granted. However, later (after the Branch Davidians asserted the ATF had fired first) it was announced that the crucial videotape was "blank".
- On April 14, 1993, we had been told that the whole group would be out in less than two weeks. We were informed that the First Seal was completed, and David Koresh was working on the second one. We told the FBI that. Later, we learned the FBI did not believe Koresh at all. The FBI claimed the Branch Davidians had lied to their lawyers. When interviewing Ruth Riddle two days after the fire, she told us she had typed the First Seal, and the computer disc was in her pocket when she escaped the fire. We contacted the Texas Rangers, who recovered the disc. When it was printed, there was in fact a First Seal. They had not lied to us.
- We announced that the Branch Davidians had agreed to a surrender plan, worked out with the FBI. Recently released audio tapes of the negotiations indicate that only days before the FBI attack, David Koresh went over the plan with the FBI negotiator, after we had told the FBI they were coming out.

In the "Legacy of Waco", I revealed the background of Paul Gray, the "independent" arson investigator reporting to the Attorney General. Attached to this Update is a copy of the business card Paul Gray handed to witnesses in the 1980's clearly identifying himself as an ATF Special Agent. I also predicted that the underlings would be blamed, and no senior leaders would be disciplined. That prediction was true — senior executives were permitted to leave their posts without discipline, either by resignation or full benefits retirement. Some were promoted. Others remained in office and are still at the Cabinet level. Two leaders of the ATF raid itself were fired for their actions, including lying to the investigators, their superiors, and the public, but they have been reinstated with pay back. No FBI or Justice Department officials have been disciplined at all. No significant discipline — administrative or criminal — has been imposed. I have represented clients over the years whose transgressions have paled in comparison to the misdeeds of these senior people in charge.

I also predicted no thorough investigation would occur. The Treasury Department Report made an effort, but its teachings have been ignored. The Justice Department conducted what cannot be described as anything other than a whitewash.

On July 1, 1994, I retired from the Marine Corps after 14 years of active duty and 16 years of reserve duty. My wife and our two grown children are Americans dedicated to this country and the preservation of our Constitution. My wife also served all those years I was in uniform, sharing the sacrifices. Our daughter and son are active duty Marine Officers today. We put our actions where our words are when it comes to serving our country. We take seriously our oath to

defend the Constitution of the United States of America against all enemies, foreign and domestic.

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