The government that rules in our name is paying executive- and Yuppie-level salaries to lawyers and propagandists for writing attacks upon my book, The Ashes of Waco. On the overleaf is a government press release about the material contained in Chapter 14 of the book. Below is a guide to the tricks in the government's bulletin:

1st Paragraph. The paragraph says, "...military support in this matter was lawfully provided." That's a lawyerly trick. It was lawfully provided, but it was not lawfully requested or obtained.

2nd Paragraph. The press release says, "all types of assistance...provided the ATF in this matter falls outside the 'Posse Comitatus Act.'" Yes, but only because the ATF lied when it claims that the raid on Mt. Carmel was staged in order to further the drug war, which is except from Posse Comitatus prohibitions.

The release says, "the type of military support that was provided the ATF...could have been obtained regardless of whether or not there was a showing of a drug nexus." It could have been obtained, perhaps, but it could not have been legally obtained, because of the Posse Comitatus act.

3rd Paragraph. The first sentence, "the ATF uncovered and disclosed, in good faith, information of a possible narcotics violation at the Davidian compound" is a real prize. The ATF can "in good faith" uncover a "possible narcotics violation" anywhere if it is credulous, just as I can "in good faith" find evidence that the world is flat or that Martians run the government.

In fact, the ATF knew that there was no drug lab at Mt. Carmel: its informant told them as much.

The second sentence, "This information was accepted by the state and federal military entities," says nothing. Thanks to the Posse Comitatus Act, it is not the job of state and federal military authorities to investigate drug violations inside the U.S. It would be illegal for them to do so. The military authorities must accept information from the FBI, ATF and DEA at face value.

The last sentence is a grand prize. It says, "the helicopters used to assist the ATF were not armed." In my book, I don't claim that they were armed. The ATF agents inside the helicopters were armed!
FOR IMMEDIATE RELEASE
July 19, 1995

STATEMENT BY TREASURY GENERAL COUNSEL EDWARD S. KNIGHT

Dick Reavis has questioned the legal basis for the military support to the Bureau of Alcohol, Tobacco and Firearms in the Davidian matter. The Treasury Department's Waco Administrative Review and my office have reviewed the law and facts. We have concluded that military support in this matter was lawfully provided.

A reading of the specific statutes shows, first, that the "Posse Comitatus Act" — which bars military forces from direct civilian law enforcement — does not prohibit all military assistance to civilian law enforcement. Second, all types of assistance — including national guard assistance — provided the ATF in this matter falls outside the "Posse Comitatus Act." Third, the type of military support that was provided the ATF during the investigation of the Davidians and execution of warrants could have been obtained regardless of whether or not there was a showing of a drug nexus.

The facts are that ATF uncovered and disclosed, in good faith, information of a possible narcotics violation at the Davidian compound. This information was accepted by the state and federal military entities. All of the special forces training was provided consistent with orders issued by the military. Finally, as the Texas National Guard required, the helicopters used to assist ATF were not armed.

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RR-439
DISTORTIONS IN THE ASHES OF WACO BY DICK J. REAVIS

Distortion: Reavis states that federal law enforcement agents threw "grenades" inside the compound (p. 11).

Fact: ATF agents were not armed with grenades. Only the Branch Davidians had and used hand grenades, which explode, expelling fragments to kill and maim. Grenades thrown by Branch Davidians badly injured ATF personnel.

Some ATF agents were authorized to use flashbangs, diversionary devices which employ a bright flash and a loud noise to distract—not injure. There is no evidence that any Branch Davidian was injured by a flashbang.

Distortion: Reavis states that fully automatic weapons—machineguns—may be lawfully purchased or made in the United States (p. 34).

Fact: Since 1986, it has been illegal to manufacture machineguns, except by licensed manufacturers for sale to the military, to law enforcement, and for export. Pre-1986 machineguns may only be sold, transferred, or purchased with prior approval by ATF.

Distortion: Reavis states that kits to convert the semi-automatics to automatic fire are legal items of commerce (p. 34).

Fact: Conversion kits designed and intended for use in converting weapons into machineguns are not legal items of commerce.

Distortion: Reavis states that converting an AR-15 to automatic fire is not a simple job and requires special equipment (p. 34).

Fact: Special equipment is not necessarily needed to convert an AR-15 rifle into an illegal machinegun. Merely substituting some M-16 parts may turn an AR-15 rifle into a machinegun—a matter on which ATF has issued a public warning since 1988. Furthermore, milling out the AR-15 for insertion of an automatic sear is a comparatively easy process. Trade publications commonly carry advertisements from companies selling tools that
are specifically designed to make the conversion process simple.

**Distortion:** Reavis claims that the affidavit did not show intent, a requirement of the law (p. 35).

**Fact:** The search warrant affidavit, examined by a detached and neutral magistrate, did contain facts showing Howell/Koresh's intent to commit a crime. The affidavit clearly states that Koresh expressed a desire to obtain and/or manufacture machineguns and hand grenades, and all of the evidence in the affidavit clearly indicates that he was gathering all of the parts and machines necessary to fulfill that intent. Further, the affidavit refers to several witnesses who stated that they either saw or heard machinegun fire and explosions. Finally, the purpose of a search warrant is not only to seize evidence of a crime, but also to seize contraband, and an illegal machinegun—one that is not registered—is contraband and may be seized.

Proof of a crime meeting prosecution standards is not needed to obtain a search warrant. Under the standard established by the Supreme Court, probable cause to obtain a search warrant is established by examining the affidavit for the "totality of the circumstances" presented. In fact, the leading Supreme Court case, Illinois v. Gates, 462 U.S. 213 (1983), upheld a finding of probable cause based only on an affidavit that partially corroborated an anonymous tip.

**Distortion:** Citing selective legal scholarship, Reavis suggests that the firearms statutes enforced by ATF are unconstitutional (p. 122).

**Fact:** Reavis fails to mention that the Federal Courts, including the Supreme Court, have consistently upheld the constitutionality of such statutes. United States v. Miller, 307 U.S. 174 (1939); United States v. Hale, 978 F. 2d 1016 (8th Cir. 1992) (rejecting constitutional challenge to federal restrictions on machinegun ownership).

**Distortion:** Reavis argues that Koresh was involved in a legal business to buy and sell firearms, citing his transactions with Henry McMahon (p. 35).

**Fact:** Koresh did not have the license necessary to legally engage in business as a firearms dealer. In fact, Henry McMahon, doing business as Hewitt
Hand Guns out of his home, attempted to mislead ATF officers about his relationship with Koresh. On one of ATF's visits to his home, McMahon told the ATF officers that Koresh, a "preacher," was storing 65 AR-15 rifles missing from his stock. About a month later, McMahon presented ATF with receipts and ATF forms reflecting the sale of the missing 65 lower receivers to "Vernon Howell," implying that David Koresh and Vernon Howell were two different people. In fact, 15 of the AR-15s which McMahon sold to Koresh were converted to illegal machineguns.

Distortion: Reavis suggests that the Davidians were merely defending themselves against excessive, deadly force.

Fact: The Davidians were not defending themselves. They set a deadly ambush for law enforcement officers who were serving a valid search warrant. On Turning Point, Graham Craddock, a Branch Davidian, admitted that members of the compound were lying in wait for Koresh's signal to shoot these officers.

The book paints a picture of the Davidian women dressing their children and attempting to hide them from an impending assault. The book omits any description of the Davidian men getting their assault rifles, including machineguns and .50 caliber rifle, passing out ammunition, and concealing themselves to await the order to fire.

Distortion: The helicopters strafed the compound (pp. 130-134).

Fact: The helicopters did not strafe the compound. All the helicopter pilots and crew say the helicopters were not armed and did not fire on the compound. Mulloy, a reporter, says the helicopters were turning away when ATF cattle trailers started up the road. Firing erupted 10-20 seconds after this. Only a fixed wing craft was over the compound later, when 911 tapes claimed strafing.
Distortion: The number of raiders who disembarked at Mt. Carmel has never been authoritatively established (p. 138).

Fact: The Treasury Review (Report, 81) has established that 76 agents disembarked from the cattle trailers. Six forward observers were also direct raid participants.

Distortion: Reavis implies that the Davidians thought that ATF shots at the dogs were directed at them, and that is what started the fire fight.

Fact: No shot was fired at any dog until well after a barrage of gunfire erupted from the compound (pp. 138-141).

Distortion: There are two kinds of federal search warrants (p. 139).

Fact: This is simply wrong. There is only one kind of warrant. There are two ways of executing a warrant, depending on whether the agent thinks it is safe to knock and announce.

Distortion: The Texas Rangers didn't take custody of the compound until 3 hours after the fire, and ATF could have taken the "missing" right side of the door (p. 142).

Fact: After the fire on April 19, an ATF explosives expert was the only ATF employee to have access to the compound and he was accompanied by a Texas Ranger. Furthermore, the Rangers have said that they simply did not recover the right side of the door because there was nothing particularly recognizable left.
David Thibodeau says Koresh advised his followers that "no one should do anything stupid" when ATF approached.

Branch Davidian Graeme Craddock confessed on Turning Point that members of the compound were lying in wait for Koresh's signal to shoot ATF agents. Koresh advised his followers to get out the guns and the ammunition in preparation for ATF's arrival.

Six Davidians were killed.

ATF agents killed three Davidians on February 28. Three others were killed by persons inside the compound.

Defense lawyers testified that Koresh and his followers were involved in a business venture to buy and sell guns.

The Treasury review found no independent evidence to corroborate the claim that Koresh bought the guns as an investment. If this was true, he did not have the proper licenses to conduct such a business.
Assertion: In the course of a meeting between McMahon and ATF, McMahon called Koresh who offered to show ATF his guns; McMahon offered Aguilera the phone with Koresh still on the line, but Aguilera waved McMahon away (p. 38).

Fact:

- McMahon did pass a message to this effect from Koresh to the agents. However, the ATF agents were understandably reluctant to have direct contact with Howell/Koresh so early in their investigation.

- There is no objective reason to believe that Howell/Koresh would have willingly shown the agents his illegal machineguns.
Assertion: "My reading of the warrant does not convince me that there was intent to put legal parts together into illegal weapons."

Fact:

- Mere possession of a machinegun is unlawful without any showing of intent (18 U.S.C. 922(c))

- The affidavit clearly states that Koresh wanted to obtain and/or manufacture machine guns and hand grenades, and the evidence set forth in the affidavit clearly indicates that he was gathering all of the parts and machines necessary to fulfill that intent.

- The affidavit also refers to several witnesses who stated that they either saw or heard machine gun fire and explosions at the compound.

- The warrant was reviewed by the Assistant U.S. Attorney and a federal magistrate-judge. They found there was probable cause to issue search and arrest warrants for the unlawful manufacture of machineguns and the unlawful manufacture and possession of explosives.

- The validity of the warrants was not questioned at trial.
Assertion: McLemore and Mullony say they saw the helicopters make two passes directly behind the compound at low altitude (p. 129).

Fact: McLemore testified the helicopters came within "a couple of hundred yards" of the compound.

Fact: McLemore was not in a position to state precisely how close the helicopters came to the compound, as Mullony testified that the two of them were two miles away from the compound when they observed the helicopters making the first two passes.

Fact: Mullony testified that the only aircraft over the compound during the firing was a fixed wing aircraft, which was not flying particularly low.
Tibbideaux

Statement: Special Agent Aguilera stated in his affidavit that the undercover agent had observed the upper and lower receivers of a disassembled AK-47. The AK-47 has a one piece receiver, not separate upper and lower receivers, a fact which should have been known to Special Agent Aguilera.

Fact:

- The statement is that a company in South Carolina has sold the necessary parts to convert AR-15 rifles and AK-47 rifles to machine guns if their customers had the upper and lower receivers for those firearms. Howell was a customer of this Company. That statement is correct as it relates to an AR-15s. The statement does not necessarily indicate that an AK-47 consists of two parts as Mr. Tibbideaux seems to indicate.
RESPONSE TO INCORRECT STATEMENTS IN STUART WRIGHT'S TESTIMONY

Assertion: Federal Law Enforcement has not accepted responsibility for what happened at Waco.

Truth: Treasury issued a detailed and critical report that blamed ATF for poor intelligence gathering, which lead to the premature abandonment of other options for serving the warrants. The report also criticized the ATF raid commanders who chose to proceed, even though the element of surprise had been lost. These raid commanders were demoted; they no longer have law enforcement authority, command agents, or carry weapons.

Assertion: ATF could have served the warrants when Koresh left the compound.

Truth: It must be remembered that three warrants were issued -- one to arrest Koresh, one to search the main house at the compound, and one to search the "Mag Bag" at the compound. Although ATF might have been able to arrest Koresh off the compound, it would still have been necessary to serve the search warrants on a heavily armed structure. It is entirely possible that arresting Koresh would have lead his followers to take offensive violent action to free him. It is also likely that his followers would have resisted the search warrant just as violently, even if Koresh had been arrested away from the compound. The Treasury Review fully addresses the issue of ATF's intelligence failures and criticizes ATF planners for failing to determine if Koresh ever left the compound.

Assertion: ATF used armor piercing bullets against the Davidians.

Truth: ATF did not use armor piercing bullets. It was the Davidians who fired .50 caliber armor piercing ammunition at the ATF agents.

Assertion: Rick Ross acted as an outside advisor to ATF.

Truth: Ross only gave ATF the address for David Block. He did not provide any other information to ATF.

Assertion: Helicopters arrived first and fired on the compound.

Truth: The helicopter pilots testified at trial under oath that no shots were fired from the helicopters. The doors of the helicopters were closed at all times. In fact, two helicopters were forced to land because they were hit by fire from the Davidians. None of the helicopters ever flew over the compound. The Treasury Review concluded that the helicopters arrived subsequent to the horse trailers.
Assertion: If the element of surprise was important as ATF claimed, the agents would have conducted the operation at dawn.

Fact:

- On February 11 and February 12 ATF raid commanders briefed ATF headquarters on the plans for the operation. Associate Director for Law Enforcement Daniel Hartnett questioned why the raid was scheduled for 10:00 a.m., rather than pre-dawn, when raids are generally begun. Chojnacki and Sarabyn, the raid commanders, explained that the plan depended on catching the men in the pit away from the room where the guns were believed to be located.

- ATF was also concerned about the risk to children and other innocent if the warrants were executed under the cover of darkness.

- These findings were set forth in the Treasury review.
Assertion: My guess is that Koresh did not start making machine guns until he learned of ATF's investigation.

Fact:

- A neighbor of the compound with military experience has stated that from about January and February of 1992 he heard machine gun fire on the compound property during the night hours. Koresh was not alerted to ATF's interest until agents met with Henry McMahon in the summer of 1992.

- Former residents stated that they had seen machine guns on the compound before ATF started its investigation.