

EXHIBITS TO THE FINAL REPORT

Exhibit 1: Attorney General Order No. 2256-99

Exhibit 2: Statements of Individuals Named
in the Report

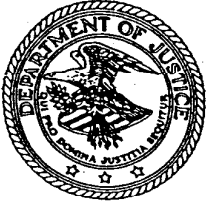
2A: Jaqueline Brown

2B: James Cadigan

2C: Richard Crum

2D: Ray and LeRoy Jahn

Exhibit 3: Diagram and Photographs
of Davidian Complex



Office of the Attorney General
Washington, D. C. 20530

ORDER NO. 2256-99

APPOINTMENT OF SPECIAL COUNSEL TO INVESTIGATE
GOVERNMENT CONDUCT RELATIVE TO
CERTAIN EVENTS OCCURRING IN WACO, TEXAS

By virtue of the authority vested in me as Attorney General by law, including 28 U.S.C. §§ 509 and 510, in order to discharge my responsibility to provide supervision and management of the Department of Justice, and to ensure that there is a full and thorough investigation of whether any government employee or agent directly caused the loss of life at the Mt. Carmel compound at Waco, Texas, on April 19, 1993, and of whether any government employee or agent withheld or suppressed evidence or information or made fraudulent statements regarding the events at the Mt. Carmel compound at Waco, Texas, on April 19, 1993, I hereby order as follows:

(a) John C. Danforth is appointed to serve as Special Counsel at the United States Department of Justice.

(b) The Special Counsel is authorized to investigate the following matters:

(1) whether any government employee or agent made false or misleading statements, allowed others to make false or misleading statements, or withheld evidence or information from any individual or entity properly entitled to obtain evidence or information, concerning the events occurring at the Mt. Carmel compound at Waco, Texas, on April 19, 1993;

(2) whether any government employee or agent destroyed, altered, or suppressed evidence or information relative to the events occurring at the Mt. Carmel compound at Waco, Texas, on April 19, 1993;

(3) whether any government employee or agent used any incendiary or pyrotechnic device at the Mt. Carmel compound at Waco, Texas, on April 19, 1993;

(4) whether any government employee or agent started, or contributed to the spread of, the fire at the Mt. Carmel compound at Waco, Texas, on April 19, 1993;

(5) whether any government employee or agent engaged in gunfire at the Mt. Carmel compound at Waco, Texas, on April 19, 1993; and

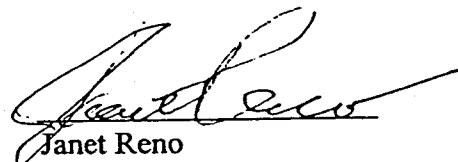
(6) whether there was any illegal use of the armed forces of the United States in connection with the events leading up to the deaths occurring at the Mt. Carmel compound at Waco, Texas, on April 19, 1993.

(c) If the Special Counsel believes it is necessary and appropriate, the Special Counsel is authorized to prosecute federal crimes arising from his investigation of these matters and federal crimes committed with the intent to interfere with the Special Counsel's investigation, such as perjury, obstruction of justice, destruction of evidence, or intimidation of witnesses.

(d) Sections 600.4 through 600.10 of Title 28 of the Code of Federal Regulations are applicable to the Special Counsel.

(e) In addition to the confidential report requirement under section 600.8(c), the Special Counsel, to the maximum extent possible and consistent with his duties and the law, shall submit to the Attorney General a final report, and such interim reports as he deems appropriate, in a form that will permit public dissemination.

Sept. 9, 1999
Date


Janet Reno
Attorney General



U.S. Department of Justice

Federal Bureau of Investigation

orig + attach
to JGM
8-17-00
Jm

Office of the General Counsel

Washington, D.C. 20535

August 16, 2000

The Honorable John C. Danforth
Special Counsel
200 North Broadway
St. Louis, Missouri 63102

Dear Senator Danforth:

You undertook an enormous responsibility in investigating Waco. Your ultimate goal -- telling the American people the truth about what happened April 19, 1993 and attempting to restore the public's faith in government by doing so -- is a job I fully support. Unfortunately, certain conclusions that your staff reached as to me are factually inaccurate and your recommendations unduly harsh.¹ I am submitting this letter as a formal request that you modify the findings you make as to me in your interim report and that you retract certain referrals.²

Managing the Civil Litigation

Let me begin by giving you some context to my involvement with Waco. I agree with the statement in your report's preface that government attorneys should be held to a higher standard. I recognize the responsibility which comes with working on matters of public significance and favor as full disclosure as possible. In working on the Waco civil litigation, I have attempted to do just that. In the spring of 1997, I authorized the release of what we now refer to as FLIR tapes #3 and #4 from April 19, 1993 -- the only FLIR tapes believed at the time to exist from that day -- over the initial objections of the Criminal Investigative Division which had expressed a concern to the FBI's Freedom of Information and Privacy Act (FOIPA) Section about compromising investigative techniques and which had requested that the FLIR tapes not be publicly released.³

It was my diligence in seeking information in response to pending civil discovery requests that led to the discovery of the early morning FLIR tapes -- tapes #1 and #2 -- which were not in the investigative file and may not have been discovered otherwise. Upon review of the first tape, I realized from the timing and the sequence of Nightstalker shifts that there was another

¹ See "Civil Trial Team", Interim Report dated July 21, 2000, attachment 1 hereto.

² See Letter from J. Sedwick Sollers, III, to Stuart Levey dated July 20, 2000, attachment 2 hereto.

³ See FBI Freedom of Information and Privacy Act (FOIPA) release to David T. Hardy dated May 20, 1997; FOIPA "high visibility" memorandum concerning release; and, handwritten notes of FOIPA paralegal specialist concerning authorization for release, attachment 3 hereto.

The Honorable John C. Danforth
Special Counsel

missing tape and took immediate steps to have that tape located. I promptly gave the tape to Deputy General Counsel Thomas A. Kelley who personally walked copies of these tapes to the Director and the Attorney General. I also helped ensure that these tapes were properly released to the public -- particularly to those FOIPA requestors who had sought copies of all FLIR tapes from April 19, 1993. Simply put, my focus -- and properly so -- was on public disclosure of this information.

I was probably the most vocal advocate in the FBI for a properly conducted FLIR test to help rebut allegations that shots were fired from FBI positions into the Branch Davidian compound -- claims you have now dismissed as clearly erroneous. I advocated a compromise position with plaintiffs, before your office intervened, that would have resulted in a test using the FBI's FLIR equipment as long as appropriate safeguards were implemented to protect sensitive law enforcement techniques and then-classified information. Your eventual test mirrored many of these procedures and fully vindicated the FBI -- a result I predicted in a 1997 memo to Mr. Kelley supporting the tests over the opposition of my then-supervisor Virginia Buckles.⁴

In supervising what some have called the largest civil production the FBI has ever undertaken, I repeatedly favored full disclosure to ensure that the largest volume of Waco-related material entered the public domain. To do this, I waived discretionary privileges such as deliberative process, attorney-client, and adopted a broad reading of plaintiffs' discovery requests so that all conceivably relevant information was produced. This was an undertaking that virtually crippled the FBI's litigation resources and required 45 paralegals (or the FBI's entire civil discovery staff) to make sure this information was produced prior to trial. This was in addition to the competing demands placed upon the unit by your investigation and similar inquiries by various congressional committees.

Throughout the course of the civil case, then, I have consistently favored openness and disclosure of information. These factors are not mentioned in the section of your report devoted to the civil trial team and to the use of military rounds. Instead, the interim report implies that I am the reason "why the responsible government officials did not disclose the information in the civil case or to the public until August 1999." This statement fails to recognize the large number of other individuals who similarly had access to the information concerning the use of military rounds and who also failed to recognize the significance of it in terms of the Attorney General's congressional testimony or the prior public statements of either the FBI or the

⁴ See Note from Virginia G. Buckles to Thomas A. Kelley dated April 30, 1997; draft memorandum from Thomas A. Kelley to Jeffrey Axelrad dated June 20, 1997; note from Jacqueline F. Brown to Thomas A. Kelley dated July 11, 1997, attachment 4 hereto.

The Honorable John C. Danforth
Special Counsel

Department of Justice.⁵

Origins of "the Hickey Memo"

In February 1996, at the request of Department of Justice (DOJ) lead trial counsel Marie Hagen, I forwarded a copy of a declaration submitted in the civil case by plaintiffs' expert Richard Sherrow to the FBI's Hostage Rescue Team (HRT) and asked for their comments.⁶ Ms. Hagen was particularly interested in a munition the declaration described as a "bubblehead". According to Sherrow, on April 19, 1993, agents could not penetrate the underground shelter roof with ferret rounds so they fired at least one "military" round and referred to it as a "bubblehead". Sherrow said he was unaware of the nomenclature and function of a "bubblehead" but that its exact identity "would have to be determined before any possible contribution to the fire could be established."

I received a draft response from HRT on February 16, 1996, in what your office frequently refers to as the "Hickey memo" after its author Supervisory Special Agent (SSA) Robert A. Hickey.⁷ The memo indicated that no HRT personnel had any knowledge of the term "bubblehead". While, according to the memo, HRT had requested to use 40mm military CS rounds to penetrate the underground concrete bunker around 6:00 a.m., these rounds were unsuccessful. Instead, the rounds reportedly bounced off the bunker's roof and landed in an open field well behind the main structure. HRT also noted that the rounds were not fired into the main compound building due to their potential for causing a fire.

Nowhere in the memo are the military rounds referred to as "pyrotechnic" or "incendiary" devices. I am not an agent and have had no munitions or weapons training. Consequently, I did not know that military CS rounds could be considered pyrotechnic devices and had no reason to believe this information contradicted the operations order the Attorney General approved, her subsequent congressional testimony, or public statements the FBI or DOJ had made. Instead, my focus was on the litigation and the allegations that the FBI's actions had started the fire inside the compound. The use of this type of CS gas, exterior to the compound and at a time and place where it could not have contributed to the start of the fire, was dismissed as an issue not germane to the litigation. I understood from my discussions with them that Ms. Hagen and my immediate supervisor at the time, Virginia Buckles, were of the same opinion.

⁵ I was not employed by the FBI when Ms. Reno first testified before Congress in 1993. While I did begin working for the FBI in March 1995 just a few months before Ms. Reno testified before Congress in 1995, I had no substantive involvement with those proceedings.

⁶ See Declaration of Richard L. Sherrow dated January 16, 1996, page 6, attachment 5 hereto.

⁷ See draft Electronic Communication from HRT, CIRG to Office of General Counsel dated February 15, 1996, attachment 6 hereto.

The Honorable John C. Danforth
Special Counsel

Discussions with Marie Hagen

As I explained in my interviews with your staff, my recollection is that Ms. Hagen and I discussed the information in the draft "Hickey memo" over the phone, probably on or about February 16, 1996. I have an entry in my dayplanner which indicates that I had a meeting with Ms. Hagen at her office on Monday, February 19, 1996, concerning the Sherrow declaration. Beneath that is an entry which says "Sherrow Dec[laration] memo to M[arie] H[agen]".⁸ The "Sherrow Declaration memo" is a reference to the draft memo I had received from HRT. My "meet w/ DOJ re dec[laration]" entry has a check mark next to it corroborating that I did, in fact, meet with Ms. Hagen on February 19th to discuss the Sherrow declaration.

I have a vague recollection of being in her office, of going through the draft reply brief, and of possibly showing the "Hickey memo" to her at that time. That I did in fact do that, is supported by the entry in my dayplanner on February 20th -- the day after my meeting with Ms. Hagen -- which says "call Hickey re Gas memo".⁹ I believe this entry is there because Ms. Hagen asked me to check with SSA Hickey to see if the information in the draft memo he had sent me the previous week (and which I may have shown to her the day before) had changed before she finalized the reply brief. This entry is checked off indicating that I called SSA Hickey on that day. On February 22nd, I have an entry in my "Daily Record of Events" noting "t/c [teleconference] Bob Hickey -- draft = final" and I remember having a telephone discussion with him in which he told me there were no changes to the draft.¹⁰

As your report notes, I do not have a specific memory of talking to Ms. Hagen about the FBI using "pyrotechnic military rounds before August 1999" -- that simply was not how the issue was framed in 1996 and 1997. As I have explained to your office many times, I have a general recollection of having both the Sherrow declaration on my desk and the "Hickey memo" with my red post-its on it from my discussions with SSA Hickey. The draft was formatted to respond to certain allegations in the Sherrow declaration by page and paragraph number, *i.e.* "CHEMICAL AGENTS Pages 4 & 5", "TACTICAL CONSIDERATIONS, Page 5, paragraph 2". To the best of my recollection, I went through the documents in this order with Ms. Hagen. In doing so, it would make sense that I read portions of this 4 page memo to her to respond to issues of interest. Because the paragraph which relates to the use of military rounds was short and because

⁸ See Dayplanner task list dated February 19, 1996, attachment 7 hereto.

⁹ See Dayplanner task list and record of events dated February 20, 1996, attachment 8 hereto.

¹⁰ See Dayplanner record of events dated February 22, 1996, attachment 9 hereto. I also have two additional Memoranda of Call slips indicating I received telephone calls on February 22, 1996, from SSA Hickey at 8:55 a.m. and from Marie Hagen at 11:08 a.m. This indicates to me that my discussions with SSA Hickey and Ms. Hagen concerning CS gas issues continued throughout this period. See Memorandum of Call from Bob Hickey dated February 22, 1996, 8:55 a.m., and Memorandum of Call from Marie Hagen dated February 22, 1996, 11:08 a.m., attachment 10 hereto.

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Special Counsel

she had such an interest in HRT's comments about the term "bubblehead", I believe that I read these 6 sentences to her over the phone.¹¹

As I recall, the issue of "military rounds" per se was not the focus of our discussions but came up incidental to a discussion of the possible origin of the term "bubblehead". We both dismissed this as a litigation issue because of the time and place at which Sherrow alleged, and HRT confirmed, the rounds had been used. Your report, however, indicates that I ultimately conceded that I had no specific memory of talking to Ms. Hagen about pyrotechnic military rounds before August 1999. That I have candidly tried to differentiate between what I specifically recall and what I do not about a conversation I had over 4½ years ago should not be mischaracterized as an admission that the conversation itself never occurred at all.¹²

Discussions with Virginia Buckles

The same can be said of my discussions with Virginia Buckles. I have a general recollection of sitting in her office with the "Hickey memo" with my post-it notes on it from my conversation with Bob Hickey. While I do not have an exact recollection of talking specifically about "military rounds" per se -- again, the issue was not framed that way -- I believe based on our relationship and her involvement in the litigation that I discussed the use of military rounds with her. My memory is basically of passing on the information on the post-its, *i.e.*, "military rounds", "2-3", "permission granted", without going into an in-depth discussion about it because this was being dismissed, by Ms. Hagen, Ms. Buckles, and I, as a non-litigation issue.

In addition to my general recollection, unit procedure dictates that my supervisor would have reviewed the "Hickey memo" when it first came into the unit in draft form and again when HRT sent a final copy. While it was her custom as Unit Chief to place her initials in the bottom right hand corner of a document addressed to one of her attorneys, the Waco civil litigation was still assigned to Ms. Buckles, at this time, and she technically had primary responsibility for the case even though I did the majority of the work. As you know, her initials do not appear on the "Hickey memo" (either the draft or the final). It does not surprise me that she would not initial documents coming into the unit on a case that was assigned to her personally as opposed to a case

¹¹ The interim report, however, implied I claimed I read the entire memo to her word-for-word. This is contrary to my recollection as well as my statements to your office and should be clarified.

¹² Your interim report indicates that "[i]t is clear that Brown lied to the Office of Special Counsel during the course of this investigation." I believe your report overemphasizes the issue of a fax coversheet in reaching this erroneous conclusion. I have consistently told your staff that I do not recall faxing the memo to Ms. Hagen. If you look at my files, you will see a minimum of faxes from me to her during 1996 while I worked for Ms. Buckles. I do remember telling colleagues in August or September 1999 that I "passed" (as opposed to "faxed") this information to DOJ and that I was concerned there was no written record to that effect. This does not mean, however, that I thought there should be such written confirmation. It was only an acknowledgment on my part that proving that the information was passed would be more difficult.

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Special Counsel

assigned to a line attorney. In fact, if you review the other documents in the Waco file during early 1996, you will find that her initials are not on every one of them either. The fact that she did not initial the "Hickey memo" is not, therefore, dispositive of whether or not she actually reviewed the document when it came into the unit.¹³

At the time the "Hickey memo" came into the unit, Ms. Buckles and I enjoyed a close working relationship, particularly on the Waco litigation which initially was assigned to her.¹⁴ Nevertheless, your office advised that Ms. Buckles suggested that not only did I not share the "Hickey memo" with her but that I also failed to tell her about the Sherrow declaration which precipitated it as well. The Sherrow declaration, however, is specifically mentioned in two separate "Matters of Interest" Memoranda that Ms. Buckles submitted to then-General Counsel Howard Shapiro.¹⁵ At this time, Unit Chiefs were required each week to submit "Matters of Interest" memos to the General Counsel describing the status of, or developments in, significant pending cases. Cases are listed by name with the name of the line attorney to whom the case is assigned in parens next to it. Waco entries, however, were marked "(BUCKLES/BROWN)" to indicate that the case was being personally handled by the Unit Chief herself as well as by me. These Matters of Interest would then serve as talking points for the Unit Chief in weekly meetings with the Deputy General Counsel. Thus, not only was Ms. Buckles aware of the Sherrow declaration but these memoranda indicate that she was actively involved in responding to the declaration and advising senior executive management about those efforts as well.

August/September 1999

That I contemporaneously shared information concerning the military rounds with

¹³ Your report suggests that I intentionally placed a certain number on the "Hickey memo" that would result in it being placed in a file that would not be disclosed to the Department. I correctly followed bureau procedure and sent the original copy of a document I received to the official bureau litigation file. These files are not reviewed by DOJ attorneys but are, instead, the FBI's official file with respect to this matter. Unbeknownst to me, someone (presumably in the file room) re-routed this document to the investigative file. See Electronic Communication from HRT, CIRG to Office of the General Counsel dated February 15, 1996, attachment 11 hereto. In the interest of full disclosure and cooperation with DOJ, I recommended that the FBI's investigative file be scanned by DOJ for pre-trial document management purposes (over the vehement objection of Ms. Buckles) -- a procedure that is virtually unheard of with raw investigative files. This is, of course, how DOJ Trial Attorney James G. Touhey, Jr., came to locate the memo during a term search for "bubblehead".

¹⁴ I must take issue with your report's suggestion that I attempted to cast suspicion upon others. While my personal relationship with my then-supervisor, Virginia Buckles, may have subsequently deteriorated, we were good friends in February 1996. I have also told your investigators that I have tremendous respect for Marie Hagen's legal abilities -- although we sometimes disagreed, we have always enjoyed a productive working relationship even during the course of your investigation which has been very difficult on both of us.

¹⁵ See Matters of Interest Memorandum from V.G. Buckles to H.M. Shapiro dated February 12, 1996 and Matters of Interest Memorandum from V.G. Buckles to H.M. Shapiro dated November 12, 1996, attachment 12 hereto.

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Special Counsel

Ms. Hagen (as well as with Ms. Buckles) is supported by a memorandum Ms. Hagen wrote to then-Deputy Assistant Attorney General (DAAG) Donald Remy on September 2, 1999 -- just one week before you were appointed -- responding to allegations that information concerning the use of pyrotechnic devices had been withheld.¹⁶ These allegations became public on August 24, 1999, when the *Dallas Morning News* published a story quoting former Deputy Assistant Director Danny O. Coulson as saying that pyrotechnics had been used at Waco on April 19, 1993, contrary to the FBI and DOJ's public positions on this issue.¹⁷ Ms. Hagen, quite correctly I believe, disputes the allegation that there was any attempt to conceal this information.

As she notes, documents containing references to "pyrotechnic" rounds were turned over to Congress in 1995, presumably after review by the Department's team that collected, organized, and furnished the records to Congress at that time. While DOJ attorneys, including a member of Ms. Hagen's civil trial team, were actively involved in this process, I was not and I did not review documents which were produced to Congress indicating that military rounds or rounds that were referred to as "pyrotechnic" or "incendiary" devices had been used. As she describes, when the issue first arose in the litigation in January 1996, we did not respond to this allegation factually. When Sherrow submitted a supplemental declaration, together with news footage allegedly showing the firing of a military CS gas round into the underground bunker/pit area in March 1997, she explains, "we dismissed it as immaterial since the firing of a munition into the bunker several hours before the fire could not have been the cause of the fire -- which was the issue at hand."

This is almost precisely what I told your investigators during my third interview on June 6, 2000. The issue of military rounds arose initially in 1996 when the first Sherrow declaration was filed and again in 1997 when the supplemental declarations were filed. As I explained in my interview, Ms. Hagen was dismissive of the military rounds information -- this was not a litigation issue as far as she was concerned and she told me so. During an interview in St. Louis two weeks later, I was advised that Ms. Hagen had denied that we ever had a discussion about military rounds in March 1997 (as well as in February 1996) and that your staff believed, essentially, that I had not been truthful in describing conversations they believed did not occur.

Her September 2nd memo, however, is consistent with what I said during my interview -- that Ms. Hagen was dismissive of the supplemental declaration in 1997 and the idea that anything that had been fired into the bunker was a litigation issue (including "pyrotechnic" military CS as alleged). That she does not remember the details of discussions we had concerning an issue she dismissed is not surprising, but that does not mean that the conversations did not occur as I recall.

¹⁶ See Memorandum from Marie Louise Hagen to Donald Remy dated September 2, 1999, attachment 13 hereto.

¹⁷ See *Dallas Morning News* article dated August 24, 1999, attachment 14 hereto.

The Honorable John C. Danforth
Special Counsel

In that memo, Ms. Hagen acknowledges that she, too, is one of a number of people in the last 7 years who had access to information concerning the use of military rounds, but she simply did not appreciate the significance of the material at the time. She writes:

... I thought it significant to note that various people who have looked very closely at the events at the Branch Davidian compound over the years have not recognized the significance of this information. Mr. [Bill] Johnston was prosecuting individuals who had ambushed federal agents on February 28 and may have been involved in setting the fire 51 days later. **The firing of one or two military CS rounds at an unoccupied concrete or cinder-block structure with no result had no more legal significance with respect to the issues in the criminal case than it does in the tort case. My point was -- that until recently -- Bill Johnston did not attribute any significance to the information when he was preparing the criminal case, individuals who collected documents for production to Congress in 1995 apparently did not attribute any significance to the references in the documents they produced, I did not attribute any significance to the information in connection with our defense in the tort litigation, and others on the trial team did not attribute any significance to the information.** Our focus as litigators, whether civil or criminal, was, as it should be, on the material issues before the court.¹⁸

Not only do I agree with her assertions, but they are consistent with my recollection of our discussions and my statements to your office about those conversations, *i.e.* that we both dismissed the issue of military rounds contemporaneously in 1996 and again in 1997, as a non-issue.¹⁹

¹⁸ I did not work for the FBI at the time the criminal case went to trial in 1994. Criminal trial team interview notes and summaries use both the terms "pyrotechnic" and "incendiary" in conjunction with the words "military rounds" and create a context I was lacking in 1996. The "Hickey memo", by contrast, does not characterize the military rounds as "pyrotechnic" or "incendiary" devices.

¹⁹ I was advised by your office that Ms. Hagen said she was sure I had not passed on information concerning the FBI's use of military rounds. She reportedly said that, if I had, it would have been so significant to her that "alarm bells would have gone off, I would have called the Attorney General home at night." I do not think that is consistent with the sentiment she expressed in the September 2, 1999 memo that "until recently" -- August 24, 1999 -- she too "did not attribute any significance to the information." It is very significant to me that Ms. Hagen repeatedly uses the phrase "significance to the information" as opposed to "significance to the allegations". I believe she recognizes that the use of military rounds was more than just a completely false allegation which plaintiffs raised in an attempt to obtain discovery. Instead, I think this is a recognition that there was a basis in fact here -- that military rounds had been used -- as we discussed in 1996 and 1997.

The Honorable John C. Danforth
Special Counsel

Lack of Motive or Effort to Conceal

The interim report fails to set forth any possible motive I could have had for withholding this information from DOJ and my supervisor. At the time I received the "Hickey memo", I had been with the FBI less than one year. While I had briefly met or come in contact with some members of the Hostage Rescue Team, I hardly had friends there or personal relationships that would create a possible motive for suppressing this information. Not only did I not have a motive for withholding the information, I also did not mistakenly fail to convey the information, as your report implies, and then attempt to cover up my own "misconduct" as your report contends. Marie Hagen has consistently acknowledged to me (and I believe she has to your office as well) that she knew that HRT did not know what a "bubblehead" round was. The source of that information was the "Hickey memo" in which HRT indicated that it had no knowledge of the term "bubblehead" and my contemporaneous transmission of this information to her.

I believe that both Ms. Hagen and I knew that the FBI had used military rounds but dismissed the information in 1996 and 1997 as non-litigation issues. I do not think that either one of us made the connection that military rounds were, in fact, pyrotechnic devices and that this contradicted the Attorney General's congressional testimony as well as FBI and DOJ public statements that no pyrotechnics were used. I recognize, nevertheless, that it is my function as agency counsel to ensure that pertinent information is conveyed to DOJ attorneys in a timely fashion. I thought I had done exactly that. To the extent that Marie Hagen and I simply were not on the same page with respect to this issue, I am more than willing to accept my share of responsibility for that. I have, however, made no attempt to conceal the use of military rounds either to protect myself or others. Nor have I made any attempt to be other than completely candid during the course of your investigation.

I believe, therefore, that the conclusions the interim report draws are unwarranted by the facts and unduly harsh both personally and professionally to me. Accordingly, I respectfully request that you reconsider and find that I did not knowingly conceal information concerning the FBI's use of military rounds. I also ask that you rescind your referrals to the Office of Professional Responsibility and to my state bars.

Sincerely,



Jacqueline F. Brown
Special Assistant

JUL 20 2000 10:04 KING & SPALDING 202 626 3737 P.02

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July 20, 2000

via Facsimile (314-345-2092)

Stuart Levey, Esq.
Office of Special Counsel
1615 L Street, N.W.
Suite 510
Washington, DC 20036

Re: Lyn Brown

Dear Mr. Levey:

I am submitting this brief response on behalf of my client, Lyn Brown, to interim findings I understand the Office of Special Counsel ("OSC") intends to publish tomorrow. It is my understanding that OSC will contend that Ms. Brown misled your Office about whether she shared the substance of what has become known as "the Hickey memo," and particularly its reference to military rounds, with certain DOJ and FBI personnel. For the following reasons, we believe your conclusions are unwarranted and unfair:

- 1) Ms. Brown obtained the Hickey memo at the request of DOJ attorney, Marie Hagen, who was preparing pleadings in the *Waco* civil litigation and wished a response to a plaintiffs' expert affidavit. Ms. Brown has consistently and emphatically recalled that she discussed the substance of the Hickey memo with Ms. Hagen in preparation for the filing of pleadings by DOJ. Ms. Brown's daytimer reflects her intention to show the memo to Ms. Hagen, who certainly would have pursued her initial request for information had Ms. Brown not conveyed it to her.
- 2) That Ms. Hagen does not recall this discussion is hardly surprising because of the passage of time and the fact that the firing of two military rounds was immediately dismissed as a non-issue -- the memo stated that they were fired

Stuart Levey, Esq.
July 20, 2000
Page 2

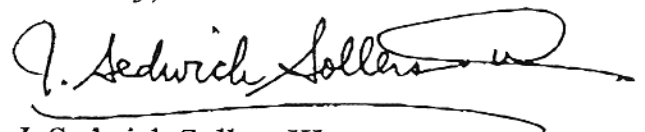
some six hours before the Waco fire and towards a bunker location well outside the compound away from the three points of origin of the fire.

- 3) Similarly, that Ms. Brown does not have a specific recollection of the details of her discussion with Ms. Hagen about the military rounds would be expected for the same reasons. Unfortunately, the fact that her lawyer made sure she was scrupulously factual and did not overstate her recollection of a four-year old conversation is now being used against her as an inconsistency.
- 4) Ms. Brown's general recollection that she would have discussed the substance of the Hickey memo with her supervisor, Virginia Buckles, was based on Ms. Buckles' supervisory and substantive involvement in the *Waco* civil litigation and the working relationship between Ms. Buckles and Ms. Brown. There simply is no reason to doubt Ms. Brown's belief that such a conversation occurred.
- 5) As the OSC has found, Ms. Brown kept multiple copies of the Hickey memo in her files and never asked anyone to disassemble to OSC. Indeed, she has done nothing but cooperate, submitting to four interviews lasting more than twenty hours both during and immediately after her pregnancy and in the midst of the *Waco* civil trial.

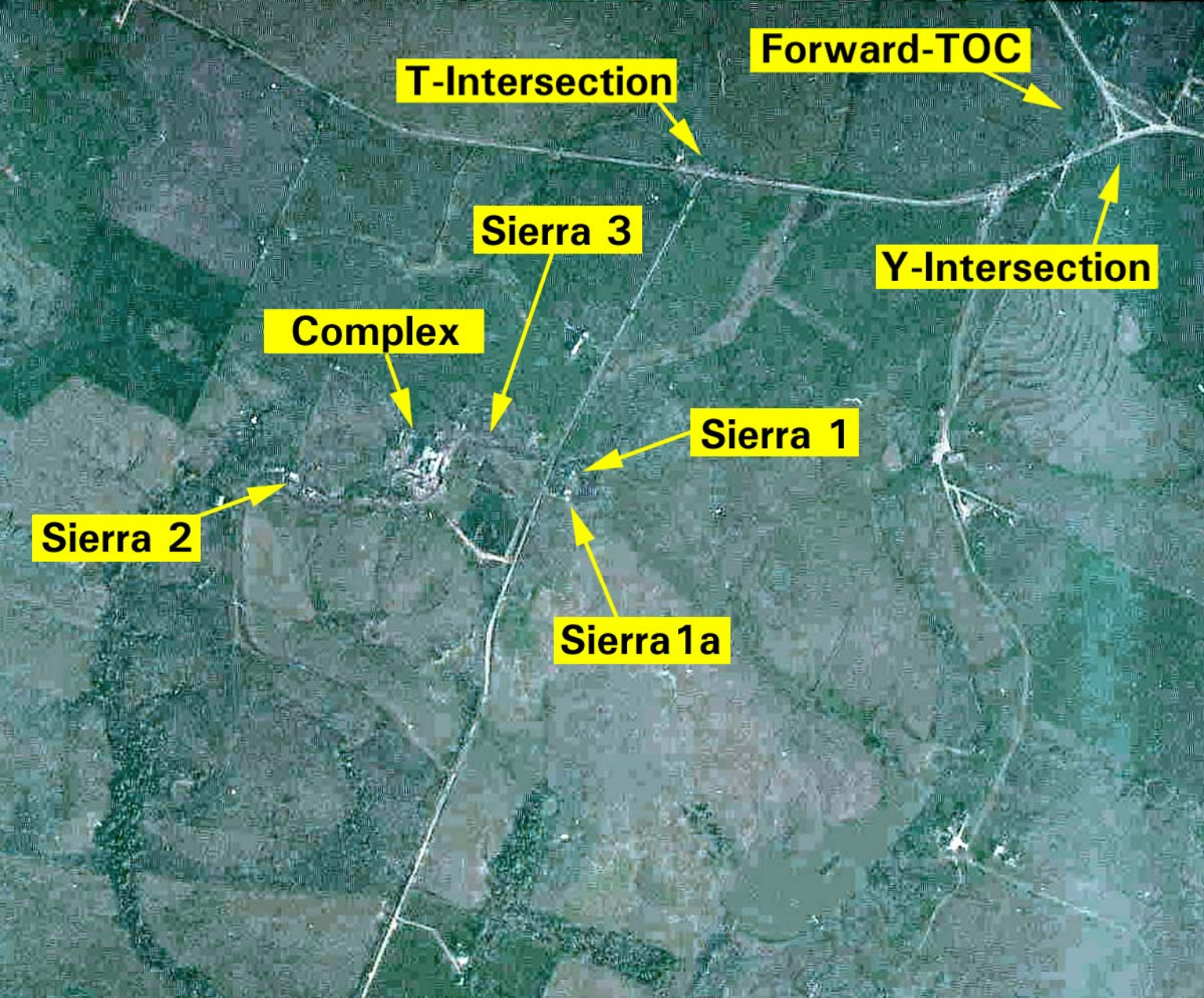
Finally, Ms. Brown had absolutely no incentive not to discuss this memo with key players in 1996, and we submit that she did so -- that has always been her recollection. OSC's proposed findings rely heavily on credibility determinations about conversations that are stale and that related to a matter that, at the time, was insignificant. Under these circumstances, to draw the harshest of conclusions and ruin the career of a dedicated public servant is unnecessary and unjust.

I appreciate your courtesies in apprising me of your intentions, but respectfully request that you reconsider your conclusions.

Sincerely,



J. Sedwick Sollers III



T-Intersection

Forward-TOC

Sierra 3

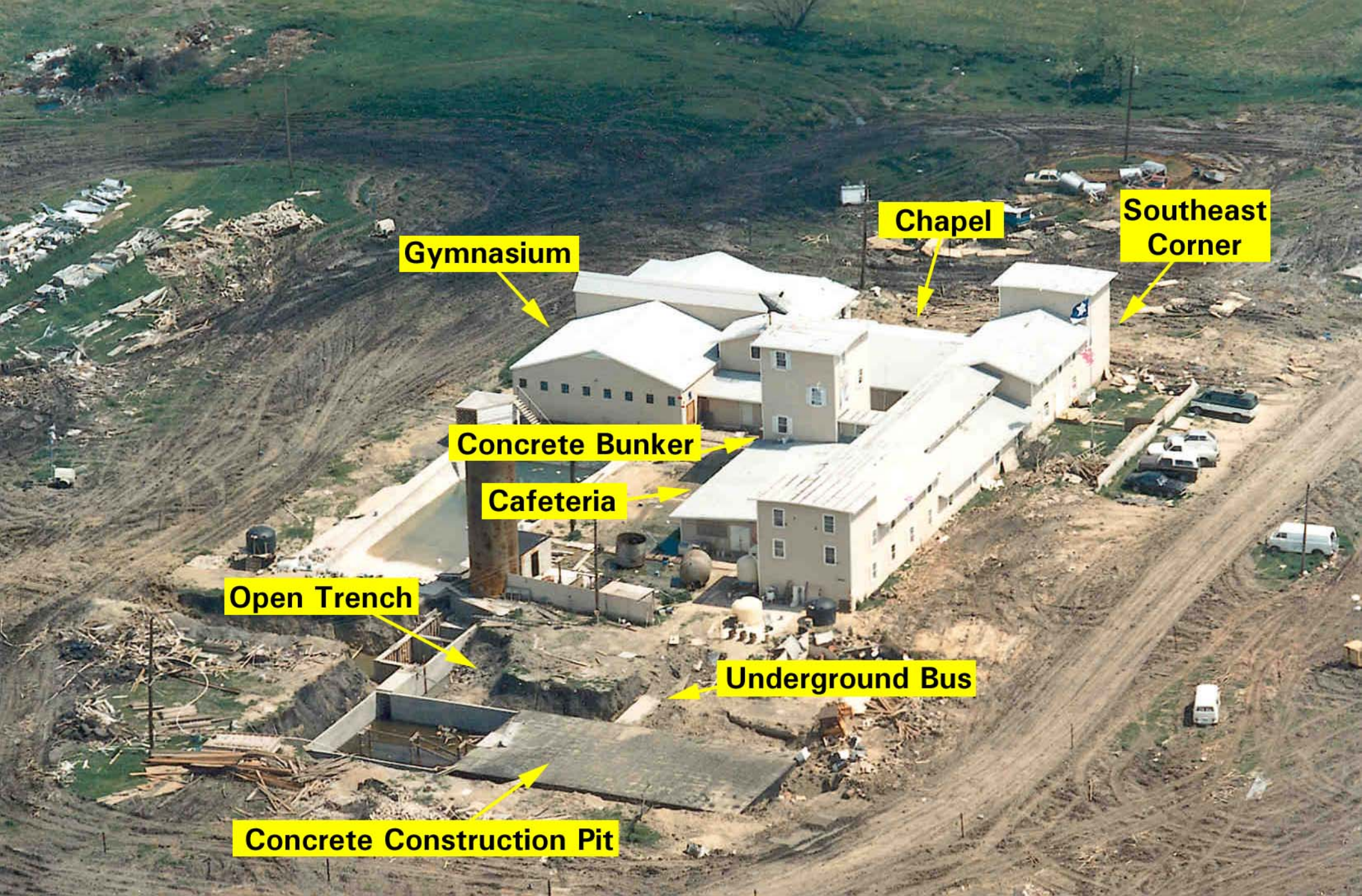
Y-Intersection

Complex

Sierra 1

Sierra 2

Sierra 1a



Gymnasium

Chapel

**Southeast
Corner**

Concrete Bunker

Cafeteria

Open Trench

Underground Bus

Concrete Construction Pit

ALPHA- 1ST FLOOR
BRAVO-2ND FLOOR
CHARLIE- 3RD FLOOR
DELTA- 4TH FLOOR

MT. CARMEL CENTER

