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The Use of the Military at Waco: The Danforth Report in Context

Jean E. Rosenfeld

ABSTRACT: In 1999 former Senator John Danforth was appointed by Attorney General Janet Reno as Special Counsel to investigate alleged illegal or improper behavior by government agencies before and during the Waco critical incident in 1993. His final report to the Deputy Attorney General exculpated the Bureau of Alcohol, Tobacco, and Firearms (BATF), the Federal Bureau of Investigation (FBI) and the armed forces regarding possible violations of *posse comitatus* law and related statutes. However, examination of the Danforth interim and final reports in context with three other government sources reveals that Danforth engaged in a hermeneutical defense of the government. Comparison of these major documents reveals inconsistencies, errors, omissions, terminology, and interpretations that raise questions about violations of the laws separating the armed forces from civilian police operations against United States citizens on U.S. soil. Danforth called for government openness and candor regarding Waco, but delivered an unequivocal defense of government forces instead.

On 9 September 1999 Attorney General Janet Reno appointed former Senator John Danforth as Special Counsel to investigate irregularities that had come to public attention concerning the Waco critical incident. Danforth and his staff issued an "Interim Report to the Deputy Attorney General" in July 2000.[1] In the preface, Danforth promised to address both a "longstanding public cynicism about government and its actions" and a "nearly universal readiness to believe that the government must have done *something* wrong." Affirming that the only "antidote" was "government openness and candor," he acknowledged that government attorneys withheld information about the use of military pyrotechnic rounds at Waco until six years later.[2] He concluded: "It is my hope that...this investigation will not only resolve the dark questions of Waco, but will also begin the process of restoring the faith of the people in their government and the faith of the government

in the people."[3] Danforth's "Final Report to the Deputy Attorney General"[4] issued in November 2000,[5] did not produce the promised exemplary candor about the public uncertainty that led to the Danforth investigation.

Military support at Waco began before the raid on Mount Carmel Center by agents of the Bureau of Alcohol, Tobacco, and Firearms (BATF or ATF) on 28 February 1993, and ended with the tactical assault on the complex by the FBI's Hostage Rescue Team (HRT) on 19 April 1993. Government accounts of Waco include those from the Treasury[6] and the Justice departments,[7] and the House of Representatives, whose 1995-1996 Waco hearings appeared in the Subcommittees report.[8] This latter document appears to be the Danforth report's major source of information about the use of the military at Waco, although Danforth is less critical of the use of the military than is the congressional document. In addition to these official sources, two important first-person narratives by Danny Coulson,[9] a retired FBI Deputy Director, and Branch Davidian survivor, David Thibodeau,[10] provided me with alternative information about the interplay between armed forces and federal agents in this exceptional crisis. Each of these sources reveals, omits, or interprets what happened at Waco according to its worldview.[11] My method is to let these pertinent sources in the public domain comment on one other about the use of the military posited in the Danforth reports. I hope thereby to produce the most objective analysis of the data and to appeal to readers who hold widely divergent views about the Waco incident.

Historically in America there has been a general principle that the military should not be directly involved in civilian law enforcement operations.[12] Congress codified this principle in the so-called Posse Comitatus Act of 1878,[13] which reads:

> From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States, as a *posse comitatus*, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of such force may be expressly authorized by the Constitution or by Act of Congress; and no money appropriated by this act shall be used to pay any expenses incurred in the employment of troops in violation of this section and any person willfully violating the provision of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by fine not exceeding ten thousand dollars or imprisonment not exceeding two years or both such fine and imprisonment.[14]

This article will critically examine John Danforth's conclusion that government agents did not illegally or improperly employ the armed forces (including the National Guard) of the United States before and during the Waco crisis. I want to stress that the Danforth report is not simply a finding of fact. It is hermeneutical: it *interprets* the application

at Waco of the laws that separate civilian and military operations. Before and during the government's confrontation with David Koresh's Bible study group,[15] law enforcement requests for military assistance were weighed against the Posse Comitatus Act and related statutes that regulate the assistance provided by the armed forces to law enforcement agencies.[16] Danforth admits that deviations occurred, but claims they were neither illegal nor improper.

After contextualizing John Danforth's two reports—reading them with the Treasury, Justice, and Subcommittees reports—I disagree with Danforth's conclusion. When they are compared, the government's own sources raise still-unanswered questions about the use of the military at Waco. There are omissions, inadvertent revelations, inconsistencies, and euphemisms in these texts that support a more disturbing conclusion of improper collaboration between the armed services and federal law enforcement agents. The intent of the Danforth investigation was to restore confidence in government, but it instead presents us with an exculpatory hermeneutics in regard to *posse comitatus* laws, which have been weakened since the clash between FBI agents and Native Americans at Wounded Knee in 1973.[17]

This article examines the following aspects of the use of the military at Waco:

- assistance to the BATF before 28 February 1993;
- the BATF's requests for assistance in a counterdrug operation;
- military assistance provided to the FBI during the standoff;
- the development and execution of the tactical plan to end the standoff.

ASSISTANCE TO THE BATF BEFORE 28 FEBRUARY 1993

Charging that the Branch Davidians were illegally manufacturing machine guns and destructive devices, the BATF obtained a warrant for the arrest of David Koresh, the community's charismatic leader.[18] Between November 1992 and February 1993 the agency gathered intelligence and prepared for a dynamic entry into Koresh's Mount Carmel residence. A dynamic entry is a direct assault.[19] Because the Davidians were heavily armed, the BATF planned to commence a surprise raid at about 10:00 a.m., when they mistakenly thought the men would be separated from their weapons. Three BATF Special Response Teams (SRTs) would choreograph their attack on the west side, the front door, and the second-story "weapons room" of Mount Carmel with the slightly earlier arrival of three National Guard helicopters that would divert the Davidians' attention from the SRTs. The raid failed. Four BATF agents were killed and twenty were wounded. Eight agents sustained raid-related injuries. Six Davidians died, two from mercy killings by their compatriot, Neal Vaega.[20]

While the BATF was planning the direct assault in late 1992 and early 1993, a series of discussions within the United States Army Special Operations Command was challenging the "prudence" of making special operations/close quarter battle (SOT/CQB) training available to civilian law enforcement personnel.[21] Close quarter battle training had been provided by Delta Force[22] to the FBI since 1983.[23] According to the Army Special Forces definition:

> Close Quarters Battle involves "combative techniques which include advanced marksmanship, use of special purpose weapons, munitions, demolitions and selective target engagement conducted by small, specially trained units against static or halted man-made targets to defeat a hostile force with a minimum of collateral damage."[24]

In more accessible language, Danny Coulson describes a CQB training exercise with Delta Force as a "room clearing technique," during which he and other FBI agents stood in a room next to human-cutout silhouettes of hostiles, while Special Forces operators blasted open a door with flash-bang grenades and shot the "hostiles" with live ammunition without harming the agents who were impersonating hostages.[25]

The Danforth report fails to mention this pertinent debate within the Army about training civilian agencies in CQB, although the Subcommittees report warned that it foreshadowed "the potential use in civilian law enforcement of highly specialized military training, designed and intended for military operations."[26] This is a significant omission in the Danforth report because the debate demonstrates that the training of police in CQB by Special Forces was controversial even before the BATF requested it.

In December the BATF made an extraordinary and undocumented request for CQB training of BATF agents.[27] This request became known to Congress through a document from a Special Forces Judge Advocate who evidently questioned the petition after two other requests for assistance brought the initial CQB request to his attention in February.[28] The Advocate stated that "assistance in actual planning and rehearsal of the proposed 'takedown' could violate posse comitatus law…. [A q]uestion also arises as to appropriateness of...giving...SOT/CQB training to ATF."[29] In January the BATF made a second request, this time for Military Operations in Urban Terrain (MOUT), described by Army Special Forces as training in

> all military actions that are planned and conducted on a terrain complex where man-made construction impacts on the tactical options available to the commander. These types of operations are characterized by large-scale offensive and defensive operations. The primary objective is to seize and hold ground using all available means. This often results in extensive damage to the area.[30]

Because CQB is conducted at MOUT sites, this second petition seems to be a petition for CQB by another name. The MOUT request was "scaled down" because it exceeded the law and military regulations.[31] At this time the BATF also asked for seven Bradley fighting vehicles—the largest request for military equipment ever received by the Regional Logistics Support Office of Joint Task Force-Six,[32] which turned it down.

Finally, JTF-6 approved the scaled-down MOUT request and assigned Rapid Support Unit Operational Detachment-Alpha-381[33] from Fort Bragg, North Carolina, to train the BATF teams. The MOUT site at Fort Hood was constructed by ODA-381 to resemble the Mount Carmel complex, based on aerial photographs taken by the Alabama and Texas National Guards, who had supplied FLIR (Forward-Looking Infrared) photos to the BATF. But the ODA-381 members considered their assignment improper and alerted the aforementioned Special Forces Judge Advocate—outside the approval process—who advised an angry JTF-6 lawyer that in his opinion the training could violate *posse comitatus* law. Consequently, the training was scaled down by the United States Army Special Operations Command, this time to a "room-clearing exercise," Danforth says, "due to the law, military regulations, and policy."[34]

But according to Danny Coulson, "close-quarter battle" and "room-clearing techniques" refer interchangeably to the Delta Force training exercise he underwent in 1983, during which a counterterror team used explosive devises to break through a door or wall to a "crisis area" where armed "targets" were holding hostages, tossed stun grenades to blind and deafen the occupants, shot the targets without endangering the hostages, and otherwise secured and controlled the area.[35] On 25-27 February ODA-381 personnel "acted as human 'silhouettes' during ATF's room clearing exercises" at Fort Hood.[36] "Scaling down" thus seems only to have consisted of shortening the training to a few days, instead of a few weeks or months. It appears from government reports that the BATF did in fact receive the CQB/MOUT training from United States Army Special Forces that it felt it needed to conduct a dynamic entry raid on the Davidian "terrain complex."

In addition, Danforth remarks, military lawyers determined that because of *posse comitatus* law restrictions, ODA-381 could not *evaluate* the BATF's dynamic entry plan, but it could *critique* the "safety aspects of ATF's rehearsal [of the dynamic entry]" instead.[37] Here we have an example of the report's hermeneutics: Danforth maintains that meticulous changes in terminology—from CQB to MOUT to "room-clearing exercises," from "evaluate" to "critique"—add up to a substantive revision of the denied BATF training requests that meets the standard enforced by *posse comitatus* law. But there is a whiff of *apologia* in a footnote to the Danforth text that belies his own conclusion:

> The conclusion that the military support provided at Waco was legal is not a close call. The applicable laws unequivocally permit such military assistance. Much of the criticism of the military support provided at Waco has focused on the issue of whether the law *should* permit this type of military assistance. This is a question for Congress not for the Office of Special Counsel.[38]

What does seem clear from this tortured history of BATF pre-raid requests to Army Special Forces is that the BATF contemplated a military-style assault on the Davidian residence, not an ordinary warrant service. Danforth ignores this implication altogether.

THE BATF'S REQUEST FOR ASSISTANCE IN A COUNTERDRUG OPERATION

There are three ways in which the wall of separation between civil and military operations under *posse comitatus* law can be breached: 1) by seeking military aid for counterdrug operations; 2) by a presidential waiver of the law; or 3) by requesting direct support from the National Guard acting under title 32 or a "pure state" status.[39] The National Guard, which is not bound by *posse comitatus* law (unless it is federalized by the President), may provide military assistance for civilian counterdrug operations.

The BATF sought to avoid the constraints of *posse comitatus*, speed up military support and avoid paying for it by recasting its illegal weapons raid on Mount Carmel Center as a counterdrug operation, claiming that the Davidians were operating a methamphetamine lab there. Without claiming a "drug nexus," the BATF would not have obtained National Guard reconnaissance and helicopters and Special Forces training in such a short time frame.[40] It requested National Guard planes, technology, and personnel through Joint Task Force-Six, not the Department of Defense, because aid from JTF-6 for a counterdrug raid was reimbursable, while assistance from the Defense Department was non-reimbursable.[41] Even before Waco, JTF-6 was suspected of "cheating"—granting requests for support even in the absence of a drug nexus, in order to justify its budget increases.[42] In another potential violation of the law, Texas Governor Ann Richards was unaware of the extent of the Texas and Alabama National Guards' role before and on 28 February until after the raid failed.[43] Thus, the interposition of joint task forces between the armed forces and civilian authorities can provide cover for use of the military in civilian operations. This problem is not addressed in the Danforth report.

Despite the Subcommittees' evidence that the BATF's drug nexus claim was a subterfuge, the Danforth report dismisses it as a "minor

issue," arguing (in error) that most of the military support provided to law enforcement agents at Waco was not premised on drug allegations.[44] This assertion contradicts the Subcommittees' finding that the pre-raid and "much of the post-raid military assistance to the FBI and ATF also came from counterdrug units and funds."[45] In fact, the Danforth report contradicts itself, by listing the large-scale equipment and technical support provided later by the National Guard to the FBI under counterdrug regulations.[46]

After 28 February when the FBI assumed command and control over the Waco siege, the BATF and the FBI requested large-scale, non-reimbursable military assistance from the National Guard and the Army.[47] A list of classified surveillance and technical equipment provided by the armed forces is published for the first time in the Danforth report.[48] Providing large-scale military "training" is considered improper under Department of Defense directives, but providing large-scale military "equipment" is permissible.[49] The large-scale request for seven Bradley fighting vehicles from the Texas National Guard before 28 February was rejected but, after the disastrous BATF raid, the FBI received ten Bradley fighting vehicles from the National Guard. In addition, the FBI received two Abrams tanks, four (or five) combat engineering vehicles (CEVs), and a tank retriever (among other trucks and vehicles), whose weapons systems were allegedly removed, although the Subcommittees report and Danforth do not agree on who provided the Abrams tanks and whether all combat vehicles or only the Abrams tanks were disarmed.[50]

Thus, in a severe domestic crisis a law enforcement agency can obtain reconnaissance, training, extensive equipment, expert advice, and personnel from several sources, including the National Guard, Special Forces, active duty armed services, and joint task forces. Increasingly, exceptions to laws enforcing the strict separation between civil and military operations are weakening that separation.[51]

The Danforth report excuses a gross violation of National Guard regulations at Waco on 28 February that occurred after the Texas National Guard supplied three helicopters and crews to the BATF. The crews were advised only the day before that they would be *participating in the raid*, arriving over Mount Carmel shortly before the Special Response Teams executed their dynamic entries. The helicopters came under intense fire, and their crews were placed in "imminent danger": "such direct involvement is prohibited by National Guard...regulations," namely, NGR-500-2.[52] The Danforth report calls this an "inadvertent violation of guidance in NGR 500-2," a National Guard regulation that states that "pilots in command will not fly into or land in areas where the aircraft is likely to be fired upon." Danforth concludes incredibly that "the Guard's support was entirely in accordance with [the] law."[53]

MILITARY ASSISTANCE PROVIDED TO THE FBI DURING THE STANDOFF

On 1 March the FBI took over the Mount Carmel operation, and the BATF was relegated to guarding the outer perimeter established by the FBI's tactical Hostage Rescue Team. The HRT was composed of "operators" and "sniper-observers," who manned the inner perimeter and the Tactical Operations Centers.[54] Also present were an FBI SWAT team,[55] the Texas Department of Public Safety, the county sheriff's department, the National Guard, and Army Special Forces personnel. Law enforcement agencies called upon exceptional resources at Waco because "[t]he situation was difficult to control and the area was difficult to defend."[56]

Appendix B of the 1993 Justice report on Waco lists "15 active duty" military personnel, without elaborating on their deployment or roles. The Danforth report mentions ten Army Special Forces "observers" and "technicians," three or four of whom were "present at any one time, one or two of whom were observers."[57] Their main purpose was "to learn how the FBI conducted a barricaded hostage operation using Special Forces equipment."[58] The title, "sniper-observer," names a specific role that members of counterterror teams assume.[59] During operations, sniper-observers observe and communicate intelligence about the target and can shoot under the rules of engagement. "Observer" and "forward observer" are interchangeable terms for "sniper-observer." The Danforth report identifies "observers" on the Special Forces team, without explaining that "observers" typically are tasked for intelligence gathering and sniping. We still do not know if these observers were there to offer advice to, participate in, or watch the FBI operations.

The Subcommittees report reveals that because their "military occupational specialties are classified, [Special Forces troops] dressed in civilian clothes...and did not identify themselves as military personnel."[60] Because they disguised themselves and are conspicuously unnamed in government reports, the Special Forces detachment at Waco fits the profile of Operational Detachment-Delta (Delta Force).[61] The Danforth report does not identify the Special Forces detachment.

Special Forces technicians maintained classified thermal imagers, ground sensing equipment, remote observation cameras, and television jamming equipment.[62] In addition, Texas National Guard technicians were present at Mount Carmel on 19 April, probably to repair and maintain the ten Bradley vehicles and five Combat Engineering Vehicles (CEVs) provided by the Guard.[63] Technical maintenance was conducted far from the complex, except on three occasions: a maintenance crew rode forward to repair a tank driven by an agent; a Special Forces technician went to a "forward position" to replace a battery in a classified thermal imager on a water tower;

and another Special Forces technician repaired forward equipment.[64] Danforth considers these deviations "clearly legal."[65]

Four of the ten Bradley vehicles used M-79 grenade launchers to propel ferret rounds of liquid CS gas from a distance into the building on 19 April.[66] The Justice Department reports that their barrels were removed "to avoid *posse comitatus* prohibitions."[67] The Subcommittees report refers vaguely to "those of these vehicles" [sic] that had weapons systems removed,[68] but Danforth reports only that two Abrams tanks were "disarmed."[69] On the negotiation audiotapes, David Koresh says he could see barrels on the Bradleys and that they constituted a threat.[70] If the barrels had not been removed and Koresh actually saw gun barrels, a violation of the law occurred.

THE DEVELOPMENT AND EXECUTION OF THE TACTICAL PLAN TO END THE STANDOFF

On 19 April 1993 the Branch Davidian crisis culminated in the fiery deaths of seventy-four Davidian men, women, and children. The HRT conducted the six-hour assault under fire from the Davidians but did not shoot back. Enhanced audiotapes indicate that persons inside Mount Carmel spread fuel over a period of several hours and lit the fires spotted by sniper-observers around noon. David Thibodeau was inside Mount Carmel, but reports that he did not see who set the fires while the walls of the building were being demolished by Combat Engineering Vehicles.[71] Summaries of autopsy reports list at least twenty Davidians who died from injuries apparently inflicted by themselves or their companions.[72] Nine Davidians survived, one against her will after an FBI agent pulled her from the burning building. There is, as yet, no credible information in the public domain that refutes these findings.[73]

The final assault was a defeat for the government as well. The Davidians refused to surrender, and during the assault the FBI had to change tactics twice—from gradual to rapid gas insertion and from limited to widespread demolition of the building. The Justice report provides repeated evidence that the FBI's overriding concern was that they—not David Koresh—*control* the behavior of the inhabitants, including their exit from Mount Carmel.[74] By blocking and gassing a critical exit, the HRT denied women and children access to a buried bus where they might have survived.[75]

Posse comitatus law has been watered down since the Wounded Knee uprising of 1973 and the advent of antidrug and antiterrorism legislation.[76] While United States law prohibits the "direct participation" of the military in police operations, it permits such "indirect support" as "offering expert advice" to law enforcement agents.[77] It does not, however, allow military advisors to "grade" a tactical plan.[78] During the first week of the standoff, FBI directors developed an emergency tactical plan

that called for armored vehicles to punch holes in the building and insert gas, providing "avenues of escape" for those who wanted to leave.[79] Variations on this "initial template"[80] were discussed for the next five to six weeks by FBI and Justice Department directors, White House presidential aides and, on 14 April, by Delta Force officers. Because the crisis "defied traditional assault methods,"[81] the FBI developed two scenarios for a final assault, one that called for the *gradual insertion* of CS gas (tear gas) over a period of two to three days and one that called for the total and *rapid insertion* of gas into the residence. If the Davidians did not exit along prescribed routes, the FBI would tear down the walls to insert gas in the center of the building.[82] Waco Special Agent in Charge Jeffrey Jamar and HRT Commander Richard Rogers both favored the *rapid insertion* gassing plan, while FBI directors preferred the *gradual insertion* of gas. On 12 April, President Clinton asked for a military review of the FBI's *gradual insertion* version of the gassing plan,[83] which resembled one proposed by Richard Rogers when he was HRT commander at Ruby Ridge in 1992. The Rogers plan at Ruby Ridge had been rejected by FBI Deputy Assistant Director Danny Coulson because it was too much like a "military assault plan."[84] However, the *rapid insertion* plan, which Jamar and Rogers reverted to on 19 April after the Davidians reportedly opened fire, was an even more aggressive scenario than the rejected Ruby Ridge plan.

Even before the President's request, Commander Rogers and the FBI had arranged to bring two Army Special Forces officers to Washington. They are referred to in the Justice report as the "current and former commanders of Delta Force" who met with Janet Reno on 14 April.[85] They were selected for the meeting "because of their tactical training and experience."[86] Danforth reveals that one of these officers was Brig. Gen. Peter J. Schoomaker of the III Army Corps at Fort Hood.[87] The other was an Army Special Forces colonel from Fort Bragg who remains unnamed in the government reports.

On 28 February Gen. Schoomaker advised Texas Governor Ann Richards about military equipment.[88] On 1 March he drove to Waco, met with HRT Commander Rogers, and "discussed the situation in general terms."[89] At Roger's request, General Schoomaker returned to Waco on 13 April for an aerial tour of Mount Carmel. Rogers and Schoomaker then flew to Fort Bragg to pick up a Special Forces colonel and continued on to Washington to answer Janet Reno's questions about the FBI's plan to insert gas gradually into the Davidian residence.[90] On the way to Washington, Commander Rogers asked Gen. Schoomaker to comment on the gassing plan, and Gen. Schoomaker declined.[91] General Schoomaker also told Janet Reno that he could not "grade" the specific tactics of the gassing plan, because that would be illegal.[92] General Schoomaker and the colonel did tell the attorney general, however, that if the HRT were military troops under their command they would:

- recommend that the HRT team "stand down" for rest and retraining;
- focus on "taking out" the leader (Koresh);
- *conduct a rapid, total, and violent gassing and demolition of Mount Carmel.*[93]

One of the two officers later testified before the Subcommittees that he had never been to the Branch Davidian residence before 13 April,[94] and the other testified that he had not ever been to Mount Carmel, but the Danforth interim and final reports place General Schoomaker at Waco on 1 March *and* 13 April.[95] From the government's own reports, one can piece together a pattern of consultation between Delta Force and the FBI on 1 March and on 13-14 April 1993.[96]

The FBI wanted to assault the Davidians on 14 April, but the attorney general delayed her acceptance of the gassing plan until after she met with military advisors on 14 April. She signed a document on 17 April permitting the *gradual* gas insertion plan, but agreed to allow the on-scene commanders to make all tactical decisions once the operation commenced. It was later claimed that the document included the proviso that if the Davidians fired on the HRT drivers of the two CEVs inserting the gas, the HRT could switch to the *rapid* gas insertion plan favored by on-site FBI Commander Jeffrey Jamar, HRT Commander Rogers, and the Delta Force officers.[97] Commanders Jamar and Rogers felt they had to revert to the rapid-insertion-of-gas plan once a sniper-observer reported the Davidians firing at HRT forces nine minutes after the assault began.

According to FBI logs, within seven minutes of the launching of the FBI attack on Mount Carmel at dawn on 19 April, the Davidians opened fire,[98] and the FBI abandoned the gradual gas-insertion plan in favor of a total, rapid injection of gas by CEVs and Bradley vehicles. Thus, in order to minimize danger to their agents, the HRT had to risk their objective of saving the children. Women and children sought shelter in an interior room, where many of them were "buried alive" or died of "smoke inhalation."[99] Thibodeau reports that the Davidians' gas masks did not fit the younger children.[100]

CONCLUSION

Despite the outpouring of military assistance and training, the advice of military experts, the use of classified military technology, the deployment of military special operations personnel, and the FBI's success in resolving previous exceptional crises, there were no winners at Waco.

After reviewing his final report in context, I cannot accept John Danforth's conclusion that the armed forces "conducted themselves properly and commendably" at Waco.[101] There are just too many deviations, inconsistencies, omissions, errors, and irregularities that

emerge from a comparison of the government's own sources. One is left with the uneasy feeling that the Waco critical incident revealed the increasingly collaborative relationship among civil and military forces in the United States. While this collaboration may be viewed by some as necessary to ensure domestic tranquility, its weakening of the principle of separation between law enforcement and the armed forces must be openly acknowledged and discussed. Are we as a nation ready to cast aside a principle that has protected civilians from their own military forces since 1878? To paraphrase John Danforth, the best immunization against pervasive public cynicism is government openness and candor. Unfortunately, Danforth's "Final Report" excised this worthy caveat and replaced it with a hermeneutical defense of the unprecedented use of the armed forces in a federal police operation against armed American citizens on Texas soil.

ENDNOTES

[1] <http://www.star-telegram.com/specials/00wacoreport/waco_report/htm>, downloaded on 24 April 2001. The "Interim Report" can also be located at <http://www.cesnur.org/testi/DanforthRpt.pdf>.

[2] Danforth, "Interim Report," ii.

[3] Danforth, "Interim Report," iii.

[4] Because only two citations below refer to Danforth's "Interim Report," all other Danforth citations refer to the "Final Report" of November 2000.

[5] <http://www.osc-waco.org/FinalReport/FinalReport.htm>, downloaded 24 April 2001. This report will soon be available at Government Printing Offices as a Justice Department document.

[6] *Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms Investigation of Vernon Wayne Howell Also Known as David Koresh* (Washington, D.C.: U.S. Government Printing Office, 1993).

[7] *Report to the Deputy Attorney General on the Events at Waco, Texas, February 28 to April 19, 1993*, redacted version (Washington, D.C.: U.S. Government Printing Office, 1993).

[8] Committee on the Judiciary and Committee on Government Reform and Oversight, House of Representatives, *Materials Relating to the Investigation into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians* (Washington, D.C.: U.S. Government Printing Office, 1997). This is referred to below as the "Subcommittees report" because it was actually prepared by subcommittees of the Judiciary and Government Reform and Oversight Committees of the House of Representatives.

[9] Danny O. Coulson and Elaine Shannon, *No Heroes: Inside the FBI's Secret Counter-Terror Force* (New York: Pocket Books, 1999).

[10] David Thibodeau and Leon Whiteson, *A Place Called Waco: A Survivor's Story* (New York: Public Affairs, 1999).

[11] See Jayne Seminare Docherty, *Learning Lessons from Waco: When Parties Bring Their Gods to the Negotiation Table* (Syracuse: Syracuse University Press, 2001) for a conceptual understanding of "worldview" in the Waco critical incident.

[12] The principle derives from Chapter 39 of the Magna Carta and Amendments II and III of the United States Constitution. See Subcommittees report, 58.

[13] Subcommittees report, 57. The *posse comitatus* provision comprises Section 15 of a military appropriations bill ("An Act making appropriations for the support of the Army for the fiscal year

ending June 20th 1879 and for other purposes," 45th Congress) and prohibited the "use of active duty military as a *posse comitatus* or otherwise to execute the laws." Cf. Danforth, 34-35.

[14] The act has been amended by Congress, especially since 1973. See Roger Blake Hohnsbeen, "Fourth Amendment and the Posse Comitatus Act Restrictions on Military Involvement in Civil Law Enforcement," *George Washington Law Review* 54 (1986): 404.

[15] Thibodeau and Whiteson, *A Place Called Waco*, 30, 49-52. A Bible study group is what Koresh's followers called themselves. In the past under different leaders, the community had called itself the "Davidian Seventh-day Adventist Association" and the "Living Waters Branch" (34-35).

[16] Danforth, 34-35; Subcommittees report, 57-59.

[17] See Subcommittees report, 57-62. 1973 was the year of the Indian uprising at Wounded Knee, Pine Ridge Reservation, South Dakota, where the use of the military foreshadowed the military involvement at Waco (62).

[18] Treasury report, 24-25, 73-74.

[19] Subcommittees report, 348.

[20] Thibodeau and Whiteson, *A Place Called Waco*, 176, 178. Thibodeau is unsure whether one of the two died of wounds sustained from the BATF assault or if, as reported to him by Davidian Kathy Schroeder, Vaega killed him. The other was severely wounded by the BATF and "begged to be put out of his misery."

[21] Subcommittees report, 67.

[22] Operational Detachment-Delta is an extremely covert antiterrorist force tasked for operations against foreign nationals.

[23] Coulson and Shannon, *No Heroes*, 169.

[24] Subcommittees report, 66.

[25] Coulson and Shannon, *No Heroes*, 169-71.

[26] Subcommittees report, 67.

[27] Subcommittees report, 67.

[28] It is very difficult to discern from the Subcommittees report the exact sequence and nature of their evidence, although it is certain that they received proof of the initial request.

[29] Subcommittees report, 71.

[30] Subcommittees report, 70.

[31] Subcommittees report, 71; Danforth, 128.

[32] Subcommittees report, 73, 353. JTF-6 acts as a "force multiplier" by coordinating military and National Guard support for law enforcement counterdrug operations in its region covering the southwestern border of the United States.

[33] ODA-381 is a Special Forces detachment formerly known as the Green Berets.

[34] Danforth, 39, 130.

[35] Coulson and Shannon, *No Heroes*, 169-71. The CQB exercise is similarly described in the Treasury report, 44, B-62; Subcommittees report, 70; and in the Danforth report, 35-36.

[36] Danforth, 131.

[37] Danforth, 41, emphasis added.

[38] Danforth, 34 note 38, emphasis in the original.

[39] Subcommittees report, 60.

[40] Subcommittees report, 73, 97-98.

[41] Danforth, 44, 54; Treasury report, B-12, B-15, B-23, B-24.

[42] Subcommittees report, 76.

[43] Subcommittees report, 64, 73, 93-94; Danforth, "Interim Report," 95.

[44] Danforth, 45.

[45] Subcommittees report, 65.

[46] Danforth, 138-139. Cf. Danforth , 45; Treasury report, B-18; Subcommittees report, 73, for other views.

[47] Although the Army conditions equipment loans on a lease agreement executed before delivery, the agreement was not signed until five months after equipment was provided to the FBI. The Special Counsel excuses this deviation as a procedural delay. Danforth, 44.

[48] Danforth, 38, 42, 140.

[49] Danforth, 38-39.

[50] Subcommittees report, 92. Cf. Danforth report, 38, 42.

[51] Subcommittees report, 57-102.

[52] Subcommittees report, 72. Unless they are "federalized" by presidential order, National Guard units operate under state law and their own regulations and are not subject to *posse comitatus* laws.

[53] Danforth, 43.

[54] The HRT is modeled on the British Special Air Service (SAS) and Delta Force. Coulson and Shannon, *No Heroes*, 133-41, 233.

[55] My thanks go to Jayne Seminare Docherty for pointing out that the FBI has more than one SWAT team and that they were appropriately rotated during the subsequent Montana Freeman standoff in 1996. The government sources on Waco do not specify which SWAT team or teams were utilized at Waco. My surmise is that they were not rotated and that this contributed to the argument of a Delta Force advisor (see below in text) that the government forces needed to "stand down" because they were fatigued.

[56] Justice report, 267-68.

[57] Danforth, 37.

[58] Danforth, 37.

[59] Coulson and Shannon, *No Heroes*, 349.

[60] Subcommittees report, 92.

[61] Delta Force is allowed "relaxed grooming standards" for "undercover ops." See <http://www.delta-green.com/opensource/textbook.socam.html>, 8/33. In one domestic operation conducted with the FBI under a presidential waiver of *posse comitatus*, Delta Force snipers donned FBI jackets to obscure their identities. Coulson and Shannon, *No Heroes*, 357.

[62] Danforth, 140. These technologies are not described in the text. What each technology's exact capability and function are remains unexplained.

[63] Danforth, 42.

[64] Danforth, 36-37, 140.

[65] Danforth, 36.

[66] See Danforth, 154, on liquid gas. The Justice report and the Danforth "Interim Report" list nine Bradleys; the "Final Report" lists ten.

[67] Justice report, 123.

[68] Subcommittees report, 92.

[69] Danforth, 38, 139.

[70] David B. Kopel and Paul H. Blackman, *No More Wacos: What's Wrong with Federal Law Enforcement and How to Fix It* (Amherst, NY: Prometheus Books, 1997), 433; also, Jayne Seminare Docherty, personal communication. Koresh specifically mentioned "Bradleys," not the CEVs with long "booms" or the two Abrams tanks. The FBI negotiators responded at the time on the audiotape recordings that the Bradleys were disarmed.

[71] Thibodeau and Whiteson, *A Place Called Waco*, xvi- xvii.

[72] Danforth, 25.

[73] Colleagues may disagree. I am speaking from the six major sources—four government reports, one Davidian survivor account, and one dissenting FBI deputy director's memoir—which I regard as the most credible and complete set of data I have seen and reviewed. It is unlikely that fires set almost simultaneously, as reported by observers at the scene, in

three different locations were ignited by the attacking HRT vehicles or missiles, although the mode of attack exacerbated the ensuing holocaust.

[74] Justice report, 123, 139, 142, 146, 153, 265, 266.

[75] On the blocking of the exit and injection of gas at the left-front corner of the building at 6:00 a.m. on 19 April 1993, see Thibodeau and Whiteson, *A Place Called Waco*, xviii; Danforth, 156; Justice report, 285, 287. After the attack, an HRT party led by Commander Richard Rogers entered the bus, found fresh air, and lamented that none of the children had taken refuge there.

[76] Subcommittees report, 57-62.

[77] Danforth, 35, 40.

[78] Danforth, 41.

[79] Justice report, 122.

[80] Danforth, 143.

[81] Danforth, 146-47.

[82] Danforth, 143-47; Justice report, 256-57, 276.

[83] Justice report, 243.

[84] Coulson and Shannon, *No Heroes*, 405-6. Richard Rogers was the HRT commander at Ruby Ridge in 1992, when one of his sniper-observers shot and killed Vicki Weaver while she was holding the door open for a retreating man, Kevin Harris. The same sniper-observer was at Waco and relayed to Commander Rogers the code word "Compromise," that indicated the Davidians were firing on the HRT tanks only a few minutes after the final assault began. Rogers then gave the order to gas the entire residence. An hour later, Special Agent in Charge Jeffrey Jamar told Rogers to intensify the gassing. Coulson and Shannon, *No Heroes*, 450.

[85] Justice report, 243.

[86] Subcommittees report, 94-95.

[87] Danforth, 149.

[88] Subcommittees report, 94.

[89] Danforth, "Interim Report," 95.

[90] Danforth, 149; Subcommittees report, 94; Justice report, 266-69.

[91] Danforth, 149.

[92] Danforth, 40-41, 149-150. Military authorities decided that "critiquing" or "evaluating" the plans would violate 10 U.S.C., para. 373(2) and Department of Defense Directive 5525.5, para. E4.1.5 and constitute "direct involvement" in civilian law enforcement activities.

[93] Danforth, 150; Subcommittees report, 95. The two officers testified that the comment was understood by Janet Reno as inapplicable to a domestic law enforcement situation.

[94] Subcommittees report, 94.

[95] Subcommittees report, 94. The Danforth report does not mention their testimony before Congress.

[96] Danforth, 40.

[97] Justice report, 267, 273, 288; Danforth 146-47.

[98] Danforth, 156; cf. Thibodeau and Whiteson, *A Place Called Waco*, xv, for an alternative, but not disconfirming, report.

[99] Justice report, 314-28.

[100] Thibodeau and Whiteson, *A Place Called Waco*, xii-xiii. The Danforth report, 12-14, argues that the gas did not cause the deaths of any Davidians because the gas did not reach "lethal levels." Cf. Subcommittees report, 138 for a more equivocal view.

[101] Danforth, 46.