

## From Razing a Village to Razing the Constitution: A Twenty-Year Retrospective on Waco

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### 1. Introduction

Twenty-one years ago, a botched investigation of possible gun-law violations by the Bureau of Alcohol, Tobacco, and Firearms (BATF)<sup>1</sup> culminated in a botched assaultive arrest attempt on February 28, 1993, resulting in the deaths of four BATF agents and six Branch Davidians. The Federal Bureau of Investigation (FBI) then led a siege that ensued for fifty-one days, until the FBI used tanks to gas and destroy the building housing the Davidians. The historic stand-off climaxed in a fire resulting in the deaths of seventy-six additional Davidians, about one-third of them children.

Called “the largest massacre of Americans by American Feds since 1890 and the fireworks at Wounded Knee”<sup>2</sup> and the “deadliest law enforcement operation in U.S. history,”<sup>3</sup> the incident partly inspired the home-grown terrorist bombing by Timothy McVeigh in Oklahoma City, taking an additional 168 lives. There were investigations and reviews by the executive, legislative, and judicial branches of government, as well as by non-governmental scholars, journalists, protagonists, and others. Results are summarized in David B. Kopel and Paul H. Blackman’s *No More Wacos: What’s Wrong with Federal Law Enforcement and How to Fix It* (1997). A critical examination of federal government actions at Waco was presented in the Oscar-nominated/Emmy-Award-winning documentary, *Waco: The Rules*

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<sup>1</sup> With the addition of explosives to its jurisdiction, it is now BATFE. Also, BATFE was moved during the previous decade from the Treasury to the Justice Department.

<sup>2</sup> Gore Vidal, “The War at Home,” *Vanity Fair*, November 1998, p. 110.

<sup>3</sup> Jacob Sullum, “The Fire Last Time,” *Reason*, May 1998, p. 52.

*of Engagement* (1997), by William Gazecki, Mike McNulty, and Dan Gifford.<sup>4</sup> What has been learned by and of the government since?

The Waco disaster represented just one of many ways in which the federal government and some state or local law enforcement agencies have been curtailing American rights and liberties in the name of “wars” against crime, drugs, and terrorism. Thus, when we wrote about Waco in 1997, our concluding chapter and first appendix were geared toward having “no more Wacos.” The reforms we proposed were based on numerous other law-enforcement abuses noted by us and others during the final decades of the twentieth century. So, in addition to looking at what may have been learned about Waco in the past twenty years, and whether law enforcement has changed, it is important to see whether law enforcement—for that matter, the U.S. Congress, the President, and his advisors—learned anything about how to fight crime without undermining the U.S. Constitution and killing innocent people.

So in this article, we first summarize information that was learned after the 1997 publication of our book. We then analyze how law enforcement, especially federal law enforcement, has or has not changed since Waco.

## 2. What Has Been Learned Since 1997?

It now seems certain that the FBI was determined to launch an attack on the Davidians’ home, no matter what. Two days before the final assault, while secretly planting the “bugs” that would enable them to learn of the planned fire, agents reportedly had the opportunity to capture Koresh but were told not to do so. In addition, the FBI apparently knew of a water shortage at the Davidians’ Mt. Carmel house that would soon have ended the siege, suggesting that the April 19 assault did not even shorten the siege by much.<sup>5</sup>

The FBI had always claimed that at no time during the fifty-one-day siege or the final assault did they use arms (other than CS chemical warfare gas) against the Davidians. But evidence was later developed indicating that the FBI had used two types of arms: firearms and incendiary pyrotechnic devices.

Regarding the firearms, FLIR (Forward-Looking Infra-Red) tapes of the action on April 19 showed flashes which experts interpreted as evidence of gun fire, including machine-gun fire. To some extent, the FBI could claim authorization for shooting at the Branch Davidians, since the Attorney

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<sup>4</sup> 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); and *Waco: The Rules of Engagement*, directed by William Gazecki (Fifth Estate Productions, 1997).

<sup>5</sup> Dan Gifford, “Waco Skepticism and Counter Skepticism,” *Skeptic* 7, no. 1 (1999), p. 31; David T. Hardy with Rex Kimball, *This Is Not an Assault: Penetrating the Web of Official Lies Regarding the Waco Incident* (Bloomington, IN: Xlibris, 2001), pp. 120-21; Kopel and Blackman, *No More Wacos*, p. 192.

General's directive for the final assault called for increased use of force if the CS gas attack that began that morning resulted in Davidian gunfire—a response expected apparently by everyone except Attorney General Janet Reno. The FBI continues to deny having resorted to gunfire, and “independent” reviewers continue to cover it up, but the surviving Davidians noted it as a reason that they were slow—and for many, unable—to leave the compound despite the misery caused by the CS gas and the danger of the tanks and fire destroying the structure.<sup>6</sup>

In 1999, it was revealed that spent cartridges for incendiary devices were found near the premises of the house used by the FBI during the siege.<sup>7</sup> The FBI finally admitted that contrary to Attorney General Reno's congressional testimony in 1995 (when she was accompanied by FBI officials who knew the truth and were there to feed her any necessary details), during the morning of the final siege, incendiary devices were fired at the Branch Davidians. The FBI probably accurately denies that the devices caused the fire. But, by 1995, it had been established that the FBI knew that the Davidians were planning, if attacked, to have flammable material spread out for eventual lighting by Koresh's so-called Mighty Men. At best, such foreknowledge indicates a reckless disregard of whether the incendiary devices would ignite the Davidians' flammable materials, even as tanks systematically destroyed the structure, closing off escape routes the Davidians attempted to use to flee the conflagration. Many dead bodies were found near exits that had been destroyed by the tanks.<sup>8</sup>

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<sup>6</sup> “Optics Expert Rebutts Waco Standoff Report on FBI Gunfire,” *Gun Week*, January 1, 2002, p. 12; Sullum, “The Fire Last Time,” pp. 52-53; Kopel and Blackman, *No More Wacos*, pp. 162 and 184 n. 298; Hardy and Kimball, *This Is Not an Assault*, pp. 59-60. While the initial autopsies revealed that several Davidians died by gunfire, there was no initial effort to determine the sources of the bullets found. Once the allegations of outside gunfire achieved credibility, an alleged refrigeration malfunction in the area where the bodies were stored damaged them to the point that further analysis was impossible; see Hardy and Kimball, *This Is Not an Assault*, p. 33; “Congress Panel May Test Waco Bullets,” *Reuters*, October 25, 1999; “Waco Prober Seeks FBI Firearms,” *Associated Press*, November 16, 1999; Lorraine Adams and David A. Vise, “Judge Orders Justice Dept., FBI to Reenact Last Day of Waco,” *Washington Post*, November 17, 1999, p. A9.

<sup>7</sup> Adams and Vise, “Judge Orders Justice Dept., FBI to Reenact Last Day of Waco,” p. A9; Sullum, “The Fire Last Time,” pp. 52-53; Kopel and Blackman, *No More Wacos*, pp. 161-62, 196, and 219; Hardy and Kimball, *This Is Not an Assault*, pp. 113, 116-18, and 291-92; Edward Walsh and Richard Leiby, “FBI Tape Includes Tear Gas Decision: A Key Agent at Waco Approved Use of Pyrotechnic Cartridges,” *Washington Post*, September 3, 1999, p. A1; Richard Leiby, “FBI Reverses Position on Actions in Waco Siege; FBI Reveals Waco Munitions were Potentially Incendiary,” *Washington Post*, August 26, 1999, pp. A1 and A6-A7.

<sup>8</sup> Leiby, “FBI Reverses Position on Actions in Waco Seige”; Richard Leiby, “Waco's New Question: Who Knew? Two Days After Blaze, Information on Grenades was

Attorney General Reno announced that she was shocked to learn of the use of the incendiary devices,<sup>9</sup> and promptly called for another “independent” review of her department. This review would be headed by former Senator John Danforth, who was reportedly also being considered as a possible Republican Vice-Presidential nominee, and thus anxious quickly to finish his review and clearly not interested in publicly siding with a sexual-predator-led violent “cult.” Danforth’s reported goal was to water down the 61% of the public that believed the government was at fault in Waco.<sup>10</sup>

Danforth’s top aide, chosen by Reno, was Edward Dowd, who, as a U.S. Attorney in Missouri, had apparently illegally—but with the Attorney General’s permission—used his office to campaign in favor of gun control on a state referendum,<sup>11</sup> a serious potential bias in a case that began as an effort to enforce federal gun laws.

Danforth and Dowd didn’t side with the Davidians. The review found nothing substantively untoward about the FBI’s actions, except for its failure in a timely fashion to reveal the use of the pyrotechnic devices. This lack of timely disclosure led to the prosecution of the whistleblower who eventually reported it, apparently because his whistle-blowing made the Department of Justice’s defense in the civil trial more difficult.<sup>12</sup>

Based on the FLIR tapes, the Danforth Commission also reviewed

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Withheld or Overlooked,” *Washington Post*, September 3, 1999, p. A16; David Johnston and Neil A. Lewis, “Reno orders tape seized from F.B.I.,” *New York Times*, September 2, 1999, p. A1.

<sup>9</sup> Filmmaker Mike McNulty questions her denial of prior knowledge, since he had previously sent her information about it. That she may not have been apprised of what he sent her might reflect more on her staff than on her. On the other hand, Jacob Sullum reported in a 1998 review of the 1997 film *Rules of Engagement*, that two incendiary devices had been recovered from the site. Sullum, “The Fire Last Time,” p. 54. If Reno had been genuinely surprised to learn of the devices in late summer 1999, she was clearly avoiding learning about the incident.

<sup>10</sup> James Bovard, “The Latest, Greatest Waco Whitewash,” *American Spectator*, October 2000, pp. 28-29; Phyllis Schlafly, “Asking all the wrong questions,” *Washington Times*, July 27, 2000, p. A19; *Washington Times*, July 27, 2000, p. A19.

<sup>11</sup> “Danforth prosecutor should resign,” *Washington Times*, September 23, 1999, p. A20.

<sup>12</sup> Schlafly, “Asking all the wrong questions”; “Danforth prosecutor should resign,” *Washington Times*, September 23, 1999, p. A20; Bovard, “The Latest, Greatest Waco Whitewash,” pp. 28-31; Hardy and Kimball, *This Is Not an Assault*, pp. 93, 100-1, and 154-55; David A. Vise, “Waco Whistleblower Faces Indictment,” *Washington Post*, September 1, 2000, pp. A1 and A14; David A. Vise, “Davidian Raid Whistle-Blower Indicted on Obstruction Charges, November 9, 2000, p. A2; “Washington in Brief,” *Washington Post*, June 8, 2001, p. A5.

the allegations of shots being fired on the morning of April 19, but dismissed them, hiring an outside consulting firm to review the allegations. But the independent review was by a consulting firm dependent upon various federal agencies, including the White House, for its work. The tests were private, and the report concluded that no shots were fired by the FBI at the Davidians. Danforth also was unable to find a plan to demolish the building, even though that had long since been established. Other experts reported that over 200 shots were fired by the FBI on April 19.<sup>13</sup>

### 3. The Davidians' Civil Lawsuit

For years, some of the most important evidence was kept concealed. Much of the evidence was in the custody of the Texas Department of Public Safety, but officially under the control of the federal government. So persons seeking to look at the evidence were told by the state that the material wasn't under its control, so the state had no authority to allow access to the evidence. Persons going to the federal government were told that it didn't have the evidence in question. To documentary filmmaker Mike McNulty, this Catch-22 looked like a cover-up.<sup>14</sup>

The Davidians' civil lawsuit was also thwarted by the poor behavior of the federal judge who tried the case. The judge assigned to the Davidians' civil suit against the U.S. government was the same jurist who presided over the criminal trials of some of the surviving Davidians.

Judge Walter Smith had the advantage of being already familiar with the case, but the Davidians saw him as biased and sought his recusal, which he refused. Part of the bias consisted in the incongruous sentencing at the Branch Davidians' trial, resulting from the trial jury's misunderstanding of apparently rather shoddy—or biased—judicial instructions. The jury had acquitted the Davidians of the underlying felonies they were charged with using firearms to commit, and yet had convicted them of using machine-guns in the acquitted "crimes." As clearly established through later information uncovered by attorneys involved in the civil suit and supported by the documentaries, there was only one use of a machine-gun against the BATF's raiders, and its user, as BATF information showed, was quickly killed. In violation of the Supreme Court's *Brady* rule and other requirements that prosecutors reveal exculpatory information to the defense, perjured testimony was used to suggest that the

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<sup>13</sup> John C. Danforth, *Final Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex, Waco, Texas* (2000), accessed online at: <http://upload.wikimedia.org/wikipedia/commons/8/85/Danforthreport-final.pdf>; Bovard, "The Latest, Greatest Waco Whitewash"; Hardy and Kimball, *This Is Not an Assault*, pp. 113, 116-17, 125-26, and 139; Richard Leiby, "The Man Who Knew Too Much; What really happened at Waco? Carlos Ghigliotti thought he had the answer, and now he's dead. Was he a victim of . . .," *Washington Post*, May 28, 2000.

<sup>14</sup> Gazecki, *Waco: The Rules of Engagement*; Hardy and Kimball, *This Is Not an Assault*, pp. 78 and 91-92.

individual defendants in the criminal case had used machine-guns.<sup>15</sup>

Judge Smith sentenced some Davidians for using machine-guns in the commission of felonies they were acquitted of having committed. Eventually, the Supreme Court reversed these excessive sentences, unanimously holding that only a trier of fact (the jury) could make the determinations which Judge Smith had wrongly made in his sentencing decision.<sup>16</sup>

In the civil trial, Judge Smith could claim that he was being fair since he ordered a great deal of information be discoverable by the Davidians' various attorneys. The appearance was deceptive since Smith then declined to give the attorneys enough preparation time to evaluate the mass of material. This curtailment limited the time they were allotted in court so that little of the material could be offered into evidence. The judge also severely constricted the amount of time allotted the Davidians for presenting their case and their ability to use the testimony of expert witnesses. Unsurprisingly, Judge Smith dismissed the civil suit.<sup>17</sup>

#### 4. David Hardy's Research

The year 2001 saw the release of another book summarizing the case against the government and its treatment of David Koresh and his Branch Davidians: *This Is Not an Assault: Penetrating the Web of Official Lies Regarding the Waco Incident*, by David T. Hardy with Rex Kimball. The title was based on the loudspeaker announcement to the Branch Davidians as the final assault on their home began on the morning of April 19; the title highlighted the ease of discovering the lies that the government told, quite literally loud and clear. Hardy and Kimball's book provides more evidence of the overly aggressive and seriously flawed initial BATF assault on the Davidians' Mt. Carmel home. To begin with, the helicopter chief and the ground command were initially unable to communicate since they were using different frequencies. The panicked effort for the helicopters to be involved leads to some evidence that the first shot was fired from the helicopters; earlier critics had found indications that the first shot was fired by BATF agents attacking the Davidians' dogs. One way or another, it appears that BATF fired first, contrary to its assertions that the Davidians were the aggressors. Hardy and Kimball's book also notes how members of the House

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<sup>15</sup> Kopel and Blackman, *No More Wacos*, pp. 240-42; Hardy and Kimball, *This Is Not an Assault*, pp. 74, 109, 200-1, and 213.

<sup>16</sup> *Castillo et al. v. United States*, 530 U.S. 120 (2000). For more on the appeals, see Kopel and Blackman, *No More Wacos*, pp. 243-44; David K. Shipler, *Rights at Risk: The Limits of Liberty in Modern America* (New York: Alfred A. Knopf, 2012), pp. 118-26.

<sup>17</sup> Hardy and Kimball, *This Is Not an Assault*, pp. 107 and 141-42; *Andrade v. United States*, 116 F.Supp.2d 778 (W.D. Texas, 2000).

committee investigating the incident were, like Danforth, not interested in criticizing government law enforcement or appearing to side with Koresh at a time when Republicans were hoping to take back the White House. The 1995 House Committee hearings, at which the Republicans attacked federal law enforcement and Democrats defended it, did not pay off in the 1996 elections. So when in 1999 the House Government Reform Committee said that it would investigate the new evidence about Waco, the Committee eventually belittled its own expert, Carlos Ghigliotti, who had found massive FBI shooting at the Davidians, preventing women and children from leaving Mt. Carmel. The House committee instead attempted to seize and destroy their expert's preliminary reports—a copy of which the expert had supplied to Hardy prior to the expert's unexpected death.<sup>18</sup>

##### **5. Did the Government Learn Anything from Waco?**

It is difficult to determine what lessons the government may have learned from the Waco incident. That there have been no more Wacos is due primarily to a diminished governmental interest in violently harassing odd-ball Protestant sects, “gun nuts” associated with right-wing “militia” movements, and the like. The hostility toward the due process of law has instead been associated with adding a new “war on terror” to the existing “war on drugs.” Waco assuredly taught no important government personnel that abusing constitutional protections accorded by the First, Fourth, Fifth, or Sixth Amendments was bad policy.

The Waco disaster began with a sloppy investigation, which nonetheless led to a warrant's being issued for Koresh's arrest, and for the seizure of evidence against him. The warrant was obtained far too easily. It involved old information from biased informants, rubber-stamped by a magistrate with little apparent understanding of what it meant. And the assault occurred essentially without warning—essentially an unapproved “no-knock” warrant service by means of a violent assault.<sup>19</sup> Nothing about that has changed. Sloppily produced warrants are still generally accepted for no-knock searches, as are the results of the ensuing searches. Even if a warrant is invalid, Congress has, to some extent, curbed the exclusionary rule regarding useful evidence in terrorist cases. When a law enforcement officer searches improperly, the evidence is inadmissible, but if he can trick a judge into improperly issuing a warrant, the judicial branch has almost always found that satisfactory. As with other improper actions, one problem in even recognizing the extent of the problem is that if the unjustified search fails to produce

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<sup>18</sup> Leiby, “The Man Who Knew Too Much.”

<sup>19</sup> One correction to our book: we incorrectly wrote that the eighty-car BATF convoy from Fort Hood to the city of Waco continued on to the Mount Carmel residence along with the cattle trailers which concealed the BATF agents. Kopel and Blackman, *No More Wacos*, p. 97.

evidence and thus a criminal action, the improperly searched party is not about to waste time suing about the improper warrant—and would be hard-pressed to succeed, since judges, unlike police officers, have almost total immunity against such suits.<sup>20</sup>

There is some irony in the move toward allowing the issuance of warrants without any serious effort to determine whether probable cause has actually been found. And that is that the wars on crime, drugs, and terror have been accompanied by a steady increase in the ability of law enforcement to snoop without having a warrant. The 2013 revelations by Edward Snowden did not reveal a sharp break with past practices, but rather an intensification of practices which preceded the Barack Obama and George W. Bush administrations.

In our 1997 book, we noted plans in the mid-1990s to increase wiretaps by 130% by 2004, and also noted efforts to get information from credit card companies, financial reporting services, and the like without warrants. Around the time of Waco, Congress was expanding the abilities of law enforcement to snoop by requiring that telecommunications carriers make their systems wiretap-friendly, with the Federal Communications Commission giving the FBI even more power by expanding the mandate to broadband email and voice Internet providers.

Former requirements that intelligence gathering require “specific and articulable facts” to tie an individual to foreign powers or agents for foreign powers have been watered down so that the snooping is legitimate if relevant to an authorized investigation regarding terrorism or secret intelligence. The Foreign Intelligence Surveillance Act of 1994, as amended, has drastically expanded the power of the government to search websites, emails, and other documents, often with no particular tie to terrorism, but just some vague “significant purpose” in ordinary criminal investigations.<sup>21</sup>

Until very recently, Congress and the President have made it clear that they want to expand the ability of federal authorities to snoop without warrants, claiming that the existence of some arrests arising from a huge number of searches validates violation of traditional civil liberties. Since there is no need for the surveilled to be notified, it is unclear whether surveillance laws can ever be challenged, since there is minimal ability to prove standing to sue. Also undermining protections from unreasonable searches and seizures is that, for some terrorism cases, Congress has restricted the exclusionary rule.<sup>22</sup>

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<sup>20</sup> David K. Shipler, *The Rights of the People: How Our Search for Safety Invades Our Liberties* (New York: Alfred A. Knopf, 2011), pp. 128-29 and 141-45; Kopel and Blackman, *No More Wacos*, p. 301.

<sup>21</sup> For titillation, that can include the emails of a retired general and his sometime biographer and mistress, for which criminal activity is easier to imagine than to find.

<sup>22</sup> *Clapper v. Amnesty International USA*, 133 S. Ct. 1138 (2013); Kopel and Blackman, *No More Wacos*, pp. 247-48 and 313-14; Shipler, *The Rights of the People*,



We thought that statutes were needed to forbid spying on peaceful religious groups, and that undercover agents should be forbidden to entrap persons into committing crimes. Law enforcement has curtailed such efforts involving Mormons and some fundamentalist Protestant sects. But 9/11 gave law enforcement *carte blanche* to go after Muslims. There have been, to be sure, radical Muslims worthy of investigation—just as there have been radical Jews similarly worthy of investigation, like the late Rabbi Meir Kahane. But law enforcement has not limited itself to investigating them. Using social media, it has attempted to recruit them for criminal violence that, on their own, they may not have seriously contemplated, such as conspiring to bomb synagogues, subways, and financial and governmental buildings. Law enforcement has also spied on religious groups on the chance that radicals might act like the police and infiltrate such apparently innocuous things like Muslim clubs on college campuses despite a total lack of evidence that the groups are involved in any unlawful activities.<sup>23</sup>

One lesson clearly not learned was the potential danger of inviting the military to assist in domestic law enforcement.

The Posse Comitatus Act (1878) has served to keep law enforcement efforts less militaristic. At Waco, military assistance, achieved with bogus allegations of the drug exemption from the Posse Comitatus Act, made both the arrest and siege into military operations, slighting concerns for innocent civilians. Even before foreign terrorist attacks succeeded horribly on September 11, 2001, efforts had been made in Congress to expand the drug-

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pp. 141, 159-63, and 196-203; Robert Barnes, “Challenge to wiretap law divides Supreme Court: Can anyone every contest measure?: Secrecy creates a catch-22, lawyer says,” *Washington Post*, October 30, 2012, p. A3; Ellen Nakashima, “Senate votes to renew contentious surveillance Law: Americans’ privacy is debated: Warrantless searches cited in terror-related arrests,” *Washington Post*, December 29, 2012, p. A3.

<sup>23</sup> Kopel and Blackman, *No More Wacos*, pp. 39, 312, and 335; Matt Apuzzo and Joseph Goldstein, “New York Drops Unit That Spied on Muslims,” *New York Times*, April 15, 2014 (noting that the unit had never generated a single lead). While our main concern was governmental abuse, we also called for a revival of media support for freedom of religion. Kopel and Blackman, *No More Wacos*, p. 331. The media may have tried to support the freedom of religion of Muslims, and been largely indifferent to the religious freedom of small unusual Protestant groups. But in the conflict between freedom and equality, the media have generally belittled the religious freedoms of devout Catholics with respect to such issues as health insurance for birth control and abortion and of Catholic and conservative Protestant groups’ right to the free exercise of their religion related to the issue of same-sex marriage. More closely related to the lessons of Waco, just as the FBI limited press coverage of Waco by limiting where the press could be and their access to information—facilitating the abuses culminating in what looks a lot like murder—the Secret Service has limited free speech critical of the President by limiting where protesters can appear; Shipler, *The Rights of the People*, pp. 242-49.

trafficking exemption to a terrorist exemption as well. September 11 led to expanding the use of military if allegations include suspicion of foreign-terrorist operations. The claim is that the Posse Comitatus Act is not violated by such operations because counter-terrorism is a military rather than a law-enforcement operation—although the ensuing prosecutions are for ordinary Title 18 crimes.

Also being used for such law enforcement is the National Security Agency, where spying on Americans in America is legal in the minds of the government because the information used to justify the spying was seized overseas.<sup>24</sup>

In conclusion, during the past two decades, a fair amount has been learned about how botched was the federal operation, from the outset of an investigation into fairly non-consequential gun-law paperwork problems, to what seems to many of us to have been a colossal crime by the FBI. (The precise crime and its perpetrators may be difficult to identify, but the FBI knew that an assaultive attack on the Branch Davidians would result in dozens of deaths, including of innocent women and children, and probably took steps to maximize the mayhem.)

Our proposals for improving law enforcement were based on the constitutional protections to be accorded not just the Koreshes and Branch Davidians of the country, but persons of all political and religious persuasions or lack thereof. The proposals were aimed at fulfilling the Magna Carta's goal of no freeman being "in any way ruined . . . save by lawful judgement of his peers or by the law of the land."

During the Waco siege, Steve Schneider had told FBI negotiators that "people here believe that that agency [the BATF] came here with actually the intention of murder"; on the twentieth anniversary of Waco, Senator Rand Paul was complaining that the administration refused to say that the government could not legally plot the assassination of an American on American soil.<sup>25</sup> In some ways, that is understandable. Neither the goals nor the proposals that we made to ensure that would not *again* happen, have been of any noticeable concern to federal law enforcement or to the legislative, executive, or judicial branches to which they are answerable.<sup>26</sup>

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<sup>24</sup> Shipler, *The Rights of the People*, pp. 27-28, 214, and 310 n. 54.

<sup>25</sup> Kopel and Blackman, *No More Wacos*, p. 429; Ed O'Keefe and Aaron Blake, "Senator holds long filibuster to oppose Obama's drone policy," *Washington Post*, March 7, 2013, p. A2.

<sup>26</sup> The authors would like to thank Vanessa Leggett, of the University of Houston, Downtown, for her co-authorship of an earlier version of this article.

