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BY FACSIMILE

August 30, 1999

Honorable Janet Reno
Attorney General of the United States
Washington, D.C.

Dear Madam Attorney General Reno:

As I have watched the responses made by the Department of Justice to the recent Davidian evidence controversy, I have formed the belief that facts may have been kept from you - and quite possibly are being kept from you even now, by components of the Department. Therefore, this letter is written in an attempt to advise you of facts which might allow you to better deal with the issues at hand.

As you recall, shortly after the failed February 28, 1993, raid by ATF, I asked the Texas Rangers to come into the case as an objective agency which could investigate the circumstances of the shootout and present evidence for a possible prosecution. Thankfully, the Rangers agreed. Their job was not to be an easy one, and their work was made more difficult when the FBI altered the crime scene by using armored vehicles to push Davidian vehicles away from the compound. This problem, along with others, caused me to write the letter to you dated March 23, 1993, seeking help with what I termed, "...a crisis within our District... ." You responded shortly thereafter in an attempt, I know, to gain control over a very difficult situation.

In addition to their role as investigators, the Rangers have been the primary custodians of the evidence gathered during the investigation. In 1998, an independent film-maker from Colorado named Mike McNulty began making requests to view the evidence. He contacted the Public Affairs section of the Department of Justice and he contacted me. After we had both received numerous phone calls from McNulty, Bert Brandenburg and I spoke about how to respond to his requests. We both had some reservations about dealing with Mike McNulty, in part, because of his first film, "Waco- Rules of Engagement." I felt at that time that the film was inaccurate, if not irresponsible. However, I expressed to Mr. Brandenburg that to stonewall McNulty tended to lend some credence to his already held belief that the government had something to hide. Because much of the evidence which McNulty sought to view had been in the public domain at trial, and because McNulty was not

a litigant, I believed that some reasonable but limited access should be granted him. Sometime after our discussion, Bert Brandenberg telephoned me to say that I should serve as the Department's contact with McNulty and that if I could get the Rangers to assist in allowing McNulty reasonable access to the evidence, then I should proceed in allowing him access. I have recently been told that Bert Brandenberg now distances himself from that decision and states that it was "Johnston's idea." No matter how he casts it, I am glad that McNulty was allowed to see the evidence.

Following my call to them, the Rangers kindly allowed McNulty to view the evidence. I was present on one occasion when McNulty came to Austin to see the evidence. I did not attend when he came a couple of times later. I know that his visits were closely supervised by the Rangers. At no time did he alter or disturb the integrity of any item of evidence. Following his viewing of the evidence, McNulty sought permission to interview you and me for his film. This request was denied by Bert Brandenberg. In his letter denying the request, Brandenberg discusses the fact that McNulty had been given access to the evidence (letter attached).

Based upon his observation of the evidence, Mike McNulty began to believe that evidence existed that the FBI had fired some sort of 40 millimeter projectile which could have started the fire on April 19, 1993. He has stated to me that in November of 1998, he wrote a letter to the Department of Justice, alleging facts in connection with the 40 millimeter projectiles.

On a Saturday morning in June of 1999, I received a telephone call at my home from DOJ Torts Branch lawyer Marie Hagen. Ms. Hagen was extremely upset with me. She demanded to know whether or not I had allowed Mike McNulty to view the Davidian evidence. I responded that I had. Ms. Hagen asked me what I thought I was doing, and inquired if I had received permission from the Torts Branch to allow McNulty access. She next asked if I had received permission from the Criminal Division. I responded as to both demands that the permission to do so had come from the Chief of Public Affairs, and that I figured that he had checked with the necessary folks before allowing me to coordinate with McNulty. She ended the conversation unquenched in her anger. I think that I now know why. Then within a day or so, I received a letter from Marie Hagen which directed that I account for my dealings with McNulty, Brandenburg, "...and anyone else in connection with these materials." About the same time, our office received a similar letter over the signature of Jeffrey Axelrad, Chief of the Torts Branch (letters attached).

In mid-June of this year, I received a letter from an attorney for the Texas Department of Public Safety (DPS). He later telephoned me. The attorney stated that DPS desired to cease being custodians of the Davidian evidence. I told the attorney that I would help them in any way, since DPS, particularly the Rangers, had done more than what was expected of them. DPS personnel have since explained to me that their agency simply did not have the time or resources to continue to deal with the many issues regarding the evidence, particularly the ever-increasing number of Open Records requests. DPS has felt somewhat slighted by the Department of Justice in this regard since the Department has apparently avoided dealing with Freedom of Information Act requests about the evidence by stating something like, "We don't have the evidence, the Rangers do." This response may be a little disingenuous because the Rangers actually have the evidence as Special Deputy U.S. Marshals. Genuine or not, this manner of response by the Department has caused DPS to be burdened with a large number of requests. DPS then chose to file a motion with U.S. District Judge Walter Smith, Jr., of Waco. The motion sought an order transferring responsibility for the evidence to another agency. Wisely, the Chairman of the DPS Commission asked the Rangers to take stock of the evidence before it was released. As they looked at the task of inventorying and reviewing the

evidence, the Rangers were determined to be particularly attentive to "controverted" evidence. That is, evidence which by claim of McNulty, or others, was meaningful to some alleged misconduct or misrepresentation.

A couple of months ago, Rangers began the task of looking again at the evidence. After some initial work, certain "40 millimeter" evidence became the focus of their inquiry. Because of my relationship with both the Rangers and the case, I was asked by the Rangers to work with them in their effort. This I did. Since I was the one who brought the Rangers into this case at the beginning, I figured that I should help them see it through to the end. Pretty soon, a 40 millimeter shell casing marked "M-118" and a photograph of a grey projectile with a red stripe became very significant. As soon as their significance was even suspected, I notified my U.S. Attorney, in writing, of what was going on. Soon, it was determined that the casing had been fired by the FBI on April 19, 1993, --by their own admission. This admission had been made to a Ranger in late 1993 or early 1994. The Ranger simply did not understand the significance of the casing at that time. The full significance was figured out by the Rangers just in the past couple of weeks. The photo of the projectile mentioned above shows what the Rangers now know is an M-651 pyrotechnic tear gas round. The casing goes with the projectile. As early suspicions of these problems made their way to the media via the DPS Chairman Jim Francis, I was astounded to see the Department's response was that this was "more nonsense." My surprise was based upon the fact that I had been updating my U.S. Attorney for weeks about this evidence. Attached are some of the "e-mails" which I have been able to find having to do with these discussions. Last week, I expressed this frustration to current Public Affairs Chief Myron Marlin (document attached). I am in disbelief that someone in the Department did not advise you of these developments. I hope that you can find out why they did not. In addition to the "e-mails," I sent to my U.S. Attorney, by facsimile, copies of the specifications for the M-651 tear gas round which the Rangers had obtained. Again, this was done by me weeks ago.

As you recall, when Congress investigated the Davidian matter in 1995, I was called as a witness. Once it was determined that I would have to testify, I was kept at a distance from the Department. It was not the Department that brought me to Washington to prepare for the hearing, but the Treasury Department. Although I was treated courteously by Richard Scruggs, I was not assisted by anyone with DOJ in any real way in preparing for my testimony. In fact, I was handled as if I had some strain of intellectual leprosy. A couple of days before the hearing, an AUSA named Zipperstein told me that I needed to write out a statement of my recollection of the events. This, he said, was so that I could have these matters placed into the record in case I was not given the opportunity to have my say on certain matters. An office and computer were provided to me to prepare this statement. For the next several hours, I worked feverishly on my statement. Upon completion, I walked proudly to Mr. Zipperstein's office with statement in hand only to be told that I did not need to do a statement after all. When I asked what had changed and why I would not be allowed to give the statement, Zipperstein told me simply that nothing had changed - he just did not need for me to do the statement. Naively, stupidly, I accepted his response. With the hearing beginning the next day, I made my way down the street to the Treasury Department where Undersecretary Ron Noble, who was neither ashamed of me, nor afraid of what I might say, talked with me about some of the issues which might arise at the hearing. I mention the foregoing about the previous experience because I anticipate the same or worse may occur. In fact, it may have already begun. Last week, a fax which originated with the Department of Justice came to me. The

fax was in three pages. The first was a copy of handwritten notes which had apparently been written by a paralegal who assisted in the Davidian trial preparation. The notes were of an interview of an FBI agent which was probably conducted in 1993. The notes reflect that the agent said that he fired ferret rounds and a "military gas round." An accompanying document is an outline of the witness' testimony which bears the name of the paralegal and my name. This suggests that I was present during the interview. Although I do not specifically recall the interview, I probably was present if the document says that I was. I can certainly tell you that, assuming I heard the entire conversation, the term "military gas round" would not have meant anything to me at the time. The third page of the fax was an FBI report of an agent who heard radio traffic about a military round being fired. It has been suggested to me that these documents were sent to me to "hang over my head," or to say that I'd better look out stirring this matter up, as I may have to explain this paralegal's memo. So long as it is the truth "hanging over my head," I am not afraid. I will not be intimidated by anyone with the Department of Justice. I will assist the Congress or any other body who seeks the truth in this case.

I mentioned above that I think that I understand why Marie Hagen was so upset that I had worked with Mike McNulty in allowing him access to the Davidian evidence. I believe that the three pages faxed to me last week hold the answer. At the top of the typewritten document, someone has written, "...privileged." At the bottom it appears that someone wrote, "DOJ witness do not disclose." It appears that someone was making decisions about whether the plaintiffs in the civil case, or others, should have access to these documents. It is my own hypothesis that the Torts Branch has had these documents for years, and that they decided not to make them available to the plaintiffs. The Torts Branch or some other component also apparently decided not to let you know about these documents. Certainly, as attention focused in the past year on the fire issue, the full import of these documents must have been known to whomever possessed them. I now wonder whether or not you were ever advised that two Deputy U. S. Marshals in Waco were falsely accused of leaking raid information to the media back in 1993. These allegations were completely false, if not malicious. Not only was no action taken against the accusers who were both Deputy Marshals as well, but one of them has since been promoted. Similarly, although two ATF supervisors lied to the Rangers about whether or not they knew the element of surprise had been lost before the raid, representatives of the Department of Justice chose to not prosecute these individuals – and they were rehired with ATF. This sort of non-accountability, as described above, cuts at the credibility of the Department of Justice.

You may recall that in my March 23, 1993, letter I closed by saying "...[I] am willing to accept any consequences..." for writing the letter. There have been some consequences. I will close this letter to you by briefly describing a few. Essentially, since the letter, I have been seen by many as a mutineer. The Waco Division office which I supervise has been given little help to deal with an ever more complex caseload. To deal with the caseload which we produce, the U.S. Probation Office in Waco has gone from a staff of three, to a staff of twenty in the past ten or so years. Our office saw only modest growth from one to three attorneys by 1993, with no real growth over the past six years. For most of the past six years, our office has been comparable in caseload and complexity of cases to that of the Austin office, an office which hosts more than three times as many attorneys and three times the support staff. Although our entire District has yet to prosecute a capital case, my office currently has three federal capital murder cases pending. In fact, we now have ten defendants charged in or in relation to homicide cases. If our office does not deserve resources,

certainly the victims' families do. We also have a couple of 50 ton marijuana cases and a methamphetamine case involving a ton or more pending amongst our current case load of 81 cases against some 156 defendants.

It is a reality of our large government that its department heads cannot learn of every significant event taking place within their purview. If this has happened to you, I hope that this letter can assist you in learning of some of the facts which have been known by individuals under your supervision. In an order issued some years ago, Judge Smith referred to the Davidian case as, "An American tragedy of epic proportion." It was. I hope that the truth may be learned so that the tragedy does not continue.

Sincerely,

William W. Johnston
Assistant U. S. Attorney
Chief, Waco Division
Western District of Texas