

## BIBLIOGRAPHY AND ENDNOTES

### General Sources

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*USA vs. Rockwell International*, Case # 92-CR-107, United States District Court, Denver, Colorado:

Plea Agreement and Statement of Factual Basis, 26 March 1992

Plaintiff's Sentencing Memorandum, 26 March 1992

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Wolpe, Howard, Congressman, Chairman, Subcommittee on Investigations and Oversight, Committee on Science, Space and Technology, US House of Representatives, *The Prosecution of Environmental Crimes at the Department of Energy's Rocky Flats Facility*, 4 January 1993 and Subcommittee Hearing transcripts, Volume I, II, and III (referred to herein as Vol. I, \_\_\_\_\_, etc.)

**Part One****“Operation Desert Glow”  
Rocky Flats Nuclear Weapons Plant  
Golden, Colorado, 1989-1992****Chapter One****The FBI Raids Rocky Flats. June 6th, 1989**

1. General background concerning the FBI raid of Rocky Flats was developed from Caron Balkany's interviews with the principals involved in the raid, and with others named on the List of Interviews. There was also widespread news coverage of the raid, including:
 

Paul Barrett, "Government's nuclear weapons plant near Denver is under investigation," *The Wall Street Journal*, 7 June 1989.

Michael Booth, "Rocky Flats among targets of eco-terror suspects," *The Denver Post*, 1 June 1989.

Rebecca Cantwell, "Pact allows state to monitor flats," *The Rocky Mountain News*, 17 June 1989.

Janet Day and Sue Lindsay, "U.S. agents raid Rocky Flats," *The Rocky Mountain News*, 7 June 1989.

Department of Energy, press release, 9 June 1989.

David Johnston, "U.S. begins criminal investigation at nuclear plant," *The New York Times*, 7 June 1989.

*The Los Angeles Times*, "Nuclear weapons plant target of federal raid," 7 June 1989.

Nan O'Neal, "FBI, EPA open investigation of Rocky Flats nuclear plant," *Arvada Sentinel*, 7 June 1989.

*The Rocky Mountain News*, "Safety fears escalated with FBI's raid," 27 March 1992.

Dusty Saunders, "'Frontline' has a chilling story on the ghost of Rocky Flats' past," *The Rocky Mountain News*, 26 October 1993.

Admiral James D. Watkins, Secretary of Energy, statement released 6 June 1989.

Anonymous sources report that before he'd even heard about the FBI raid, Secretary Watkins had decided that he wanted Rockwell out of all Energy Department work. In fact, the Energy Department did go after Federal Express, owned by Rockwell, within 8 days of the start of the raid, suspending the use of their services for classified material shipments pending investigation of Federal Express's Constant Surveillance Services. See, internal letter, Delores Krieg, Traffic Manager, Rockwell International, 17 June 1989.

Documentation of the problems between Rockwell and the Energy Department prior to the actual raid appear in:

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- “Rockwell has history of run-ins with regulators elsewhere,” *The Denver Post*, 7 June 1989.
- Peter Steeth, “Rockwell a conglomerate of diverse projects,” *The Denver Post*, 7 June 1989.
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2. Bryan Abas, “The Secret Story of the Rocky Flats Grand Jury,” *Westword*, 30 September 1992.
  3. Dr. Carl Johnson’s work on the effects of plutonium contamination in the Rocky Flats area includes:
 

Carl Johnson, MD, “Plutonium hazard in respirable dust on the surface of the soil,” *American Association for the Advancement of Science*, Vol. 193, 6 August 1976;

———, “Offsite distribution of plutonium in the respirable dust on the surface of the soil in the vicinity of the Rocky Flats plant,” report to the Jefferson County Board of Health, unpublished, 31 March 1977;

———, “Measuring plutonium concentrations in respirable dust,” *Science*, Vol.196:4294, 3 June 1977;

———, “Report on death rates from lung cancer in the eight census tracts near Rocky Flats and in Golden, and in nineteen census tracts at the south end of the county,” report to the Jefferson County Board of Health, unpublished, 20 November 1977;

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———, letter to the Editor, *Speak Out*, rebuttal to LeRoy Moore, 28 September 1979;

———, “Cancer incidence in an \_\_\_\_\_ contaminated with radionuclides near a nuclear installation,” *Ambio* Vol.10:4, Royal Swedish Academy of Sciences, originally presented to the American Public Health Association, 7 November 1979;

———, “Contamination of municipal water supplies in the Denver metropolitan area by the Rocky Flats plutonium plant,” presented at the annual meeting of the American Association for the Advancement of Science, 8 January 1980;

———, “Comments on the 1957 fire at the Rocky Flats plant in Jefferson County, Colorado,” reported to the Conference on the Relation of

Environmental Pollution to the Cancer Problem in Colorado, at the American Medical Center and Hospital in Lakewood, Colorado, 26 September 1980;

———, "The public health impact of the Rocky Flats nuclear weapons plant in the Denver area: A case history with recommendations," unpublished and undated document;

———, "An investigation of brain cancer, melanoma and other neoplasms in employees of the Rocky Flats nuclear weapons plant in Jefferson County, Colorado," presented to the American Public Health Association, 3 November 1981;

———, "Epidemiologic of cancer incidence in people living near nuclear installations," a letter to the editor, *Health Physics*, Vol. 45:3, 18 August 1982;

———, *et al.* "Cancer incidence and mortality, 1947-1981, in the Denver standard metropolitan statistical area downwind from the Rocky Flats nuclear plant," presented to the Epidemiology Section of the American Public Health Association's 11th annual meeting, 16 November 1983;

———, "Comment" [trends in cancer incidence over time] in *The American Statistician*, Vol. 37:4, November 1983;

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———, Memorandum to the Colorado State Board of Health, Re: The role of CDH in the decision of Judge Matsch in the Rocky Flats case, 21 August 1985;

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———, "Beyond Chernobyl: Radiation hazards and the public's right to know," presented to the American Public Health Association's annual meeting, 1 October 1986;

———, "Before Chernobyl: Hanford, Savannah, and Rocky Flats," Letters in *AMA*, Vol. 257:2, 9 Jan 1987;

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- John Cobb *et al.*, "Plutonium burdens in people living around the Rocky Flats plant," US Environmental Protection Agency project summary, March 1983;
- L.D. Hamilton, "Alternative interpretations of statistics on health effects of low-level radiation," a rebuttal of Johnson's findings, *The American Statistician*, Vol. 37:4, November 1983;
- Bertram Wolfe, "Public has exaggerated fears of exposure to radiation," *The Denver Post*, 27 September 1986;
- Gregg S. Wilkinson, et. al., "Mortality among plutonium and other radiation workers at a plutonium weapons facility," *American Journal of Epidemiology*, Vol. 125:2, 1987;
- Thomas Graf, "Doctor warned of Rocky Flats danger," *The Denver Post*, 19 June 1989;
- Richard Pollock, "Uncovering nuclear cancer," *In These Times*, 22-26 March 1978.
4. Len Ackland, *Making A Real Killing* (University of New Mexico Press, 1999).
  5. Janet Day, "Flats' worst threat may lie underground," *The Rocky Mountain News*, 23 July 1989.
  6. Joseph Krupar, *FBI Interview*, 21 December 1989. Rocky Flats, like the nation's other weapons plants, used the veil of national security to bar State agencies and the Environmental Protection Agency from inspecting much of their operation. See, Application and Affidavit for Search Warrant, p. 63. Also, Memo from Energy Department Secretary James Watkins to John Layton, Inspector General, 23 February 1990.
  7. The Energy Department was known for its lack of candor, even with Congress. See, "A Report to the Committee on Appropriations, US House of Representatives," Surveys and Investigations Staff, February 1986; Sandy Graham, "Probers denied full Rocky Flats report," *The Rocky*

*Mountain News*, 17 April 1985; and Sandy Graham, "Rocky Flats coverup charge denied," *The Rocky Mountain News*, 9 May 1985.

8. *The Denver Post*, "Rocky Flats at a Glance," 7 June 1989. Also, Assistant US Attorney Ken Fimberg, 1991, Affidavit, *Cypher vs. United States*, Civil Action 91-W-171 USDC, Colorado. According to Bruce DeBoskey, a Denver attorney who represented many Rocky Flats workers in personal injury claims, Rocky Flats may have been the most polluted place on the planet. See, Caron Balkany interview with Bruce DeBoskey, 18 September 2002. Also, Janet Day, "Flats' worst threat may lie underground," *The Rocky Mountain News*, 23 July 1989.
9. The information about Adrienne Anderson comes from her interview with Caron Balkany on 26 December 2001, and from subsequent conversations.
10. Caron Balkany interviewed Bonnie Exner on 23 June 2001.
11. The information about Jim Stone comes from Caron Balkany's interviews with principals of the FBI investigation, from interviews by Caron Balkany and Wes McKinley with Jim Stone, and from Jim Stone's FBI interview 28 July 1987.
12. Len Ackland, *ibid*.
13. The background information about US Attorney Michael Norton comes from Sue Lindsay, "Norton Traveling the Road to Respect," and "Norton reflects on life in 'hot seat'," *The Rocky Mountain News*, 7 July 1989.
14. The October 1988 Building 771 radioactive contamination incident is documented in: James Baker with Mark Miller, "A new scare at Rocky Flats," *Newsweek*, 26 June 1989; XXXX, *FBI Interview*, 14 June 1989; and Keith Fultz, Senior Associate Director, General Accounting Office, letter to the Honorable David Skaggs, House of Representatives, 27 October 1988.
15. See, the Affidavit and Application for Search Warrant for the major areas of investigative interest.
16. Attorney General Thornburgh's release of the sealed information was unusual because the Attorney General had been openly critical of publicizing investigations. David Johnston, "US Begins Criminal Investigation at Nuclear Plant," *The New York Times*, 7 June 1989. According to environmental crimes expert, attorney Adam Babich, unsealing the affidavit was a "highly unusual move." Search warrant affidavits are normally sealed because they rest on preliminary investigations.

The publicity is usually not good for the investigation. In this case, the publicity started out good for aspiring gubernatorial hopeful US Attorney Michael Norton. EPA Special Agent William Smith, whose work with FBI Special Agent Lipsky had started the investigation, recalled Norton's desire for publicity and remembers him agreeing to do the FBI raid because it was "a win win" situation for Norton. See, Caron Balkany's interviews with William Smith, 27 November 2001 and 26 June 2001. As events turned out, it more like was a "lose-lose." But back in 1989, Norton

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- looked pretty good in the press.
17. The stated reasons for unsealing the search warrant appear in the US Department of Justice, press release, "Investigation initiated at Rocky Flats," 6 June 1989. Interestingly, the Criminal Division of the Justice Department, prior to the raid, itself warned that "If the contents of the [search warrant] affidavit were to be publicly disclosed, potential defendants would be provided with a virtual road map of the areas under investigation by the government." See, undated memorandum from Martin C. Carlson, Senior Legal Advisor, to Lawrence Lippe, Chief General Litigation and Legal Advice Section, Criminal Division.
  18. Later, during the Grand Jury investigation, Rockwell and the employees' union entered into a "joint defense agreement." Through it, Rockwell knew just about everything the Justice Department was investigating, and therefore most Rockwell employees were not willing to cooperate with the FBI for fear of losing their jobs.
  19. The information about Dominick Sanchini comes from Special Agent Lipsky's congressional testimony and FBI interviews with Mr. Sanchini on 6 June 1989, 10 June 89, and 11 June 89, along with copies of Mr. Sanchini's notebooks and diaries.
  20. According to Lipsky, Sanchini was later caught having taken home some documents, despite the "handshake agreement."
  21. There are other ways Rockwell and the Energy Department could have been tipped off about the raid. The water samplers which the FBI had placed in Walnut Creek and Woman Creek, downstream from the Plant, were discovered by Rockwell a few months before the raid. Rockwell questioned EPA's Nat Miullo about them repeatedly, and although he told them it must have been placed by some neighborhood activists, it is unknown whether Rockwell accepted this explanation. The FBI/EPA joint team surreptitiously removed the samplers shortly thereafter. See, Nat Miullo, *EPA Interview*, 5 April 1989.
  22. The Criminal Division at the Justice Department used the fact that headquarters controlled the investigation to require prosecutors to rewrite the affidavit so it was not as directly accusatory of the Energy Department. See, undated memorandum from Martin C. Carlson, Senior Legal Advisor, to Lawrence Lippe, Chief General Litigation and Legal Advice Section, Criminal Division, 9. Energy Secretary Admiral James Watkins was on Capital Hill the morning of the raid, doing damage control. Joan Lowry, "Flats Raid Spreads Shock Waves," *The Rocky Mountain News*, 7 June 1989.
  23. The information about Mr. Whiteman's transfer appears in Memorandum of Interview, US Department of Energy, Office of Inspector General, 6 December 1990.
  24. The furtive Laurel and Hardy-like drum movement is documented in Vol.

I, 618 and in XXXX, *FBI Interview*, 1 November 1990. There was other evidence that some of the people at Rocky Flats had advance notice of the raid. According to Jon Lipsky, the FBI itself thought there had been a tip off and investigated a Rockwell official at the Plant and a high-level Energy Department official for obstruction of justice. The existence of this part of the investigation was not made public; the results are unknown as well.

## **Chapter Two**

### **The Whistleblower, June 15th, 1989**

25. The information concerning the whistleblowers' involvement with the FBI comes from interviews by Caron Balkany with the principals involved in the raid and with persons named on the List of Interviews; public testimony and documentation submissions by Jacque Brever and Karen Pitts to the Advisory Committee on Nuclear Facility Safety, known as the Ahearne Committee, in July, 1991; diaries kept by Ms. Brever which she used in testifying to the Grand Jury; and FBI interviews with Ms. Pitts and Ms. Brever on 15 June 1989, 16 June 1989, 17 June 1989, 12 October 1989, 17 October 1989, 31 October 1989, 1 November 1989, 22 January 1990, 21 February 1990, 22 August 1990, 22 January 1991, 11 February 1991, and 25 February 1991. The insights into the internal Rockwell response to the raid and the warnings to whistleblowers are documented in diaries kept by former Rockwell plutonium worker Jacque Brever.

The descriptions of the Building 771 plutonium incinerator are documented in the Application and Affidavit for Search Warrant and in Caron Balkany's interviews with former EPA investigator Nat Miullo on 21 June 2001 and 27 November 2001, and with EPA investigator Bill Smith on 26 June 2001 and 27 November 2001.

26. Documentation of the 1988 shutdown of Building 771 operations and the actions of Brever and Pitts during the first revelations of the FBI investigation, in addition to Balkany's interviews, *supra*, includes:  
 Bruce Finley and Thomas Graf, "Rocky Flats illegally burned, dumped waste, U.S. claims," *The Denver Post*, 10 June 1989;  
 ——— "DOE official says he knew nothing about illegal burns," *The Denver Post*, 28 June 1989;  
 Thomas Graf, "Investigation at Rocky Flats: management shakeup at plant reported," *The Denver Post*, 9 June 1989;  
 Sue Lindsay and Janet Day, "Flats burned waste secretly," *The Rocky Mountain News*, 10 June 1989;  
 Howard Pankratz, "Rocky Flats conspiracy alleged: FBI used spy plane in probe," 10 June 1989;



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Rusty Pierce, "Flats charges include illegal waste burning: document claims chemicals put in creeks feeding water supplies," *Daily Camera*, 10 June 1989; Gary Schmitz, "Use of officially idled incinerator for toxic waste suspected: Feds assume conspiracy, Rep. Skaggs speculates," *The Denver Post*, 9 June 1989; Peter Steeth, "Investigation at Rocky Flats: Mismanagement a cause for contract cancellation," *The Denver Post*, 9 June 1989.

Caron Balkany's interviews with the principals involved in the raid, with persons named on the List of Interviews, and with unnamed Grand Jury sources and the FBI interviews of Ms. Brever and Ms. Pitts provide documentation for the activities inside the Grand Jury room.

27. The union steward's comments appear in his FBI Interview, 14 September 1989.

### Chapter Three

#### The Grand Jury, August 1st, 1989

28. Oath and Instructions to the Grand Jury, Special Grand Jury 89-2.

29. Ken Fimberg's sworn testimony that Karen Pitts and Jacqueline Brever were "not very reliable sources" is in Vol. III, 194.

### Chapter Four

#### The Justice Department Ends the Grand Jury Investigation, March 26th, 1992

30. Norton and Fimberg's public statements concerning the plea bargain are found in the court filings and in statements issued by Michael Norton, 26 March 1992; 23 September 1992 "Statement of Michael J. Norton," issued by the Justice Department; and 18 November 1992 "Supplement to Statement of Michael J. Norton," also issued by the Justice Department. Some additional public statements by US Attorney Norton about the Rocky Flats investigation appear in:

Sue Lindsay, "Norton reflects on life in 'hot seat'," *The Rocky Mountain News*, 7 July 1989.

Bill Scanlon, "Norton defends Flats' plea bargain: Deal struck with Rockwell was best solution, and he'd do it again, U.S. attorney tells law school society," *The Rocky Mountain News*, 4 March 1993.

US Attorney Michael Norton also stated that one of the difficulties with the case was that no Rocky Flats employee had ever come forward to help the Justice Department and the FBI make their case. This is an incorrect statement. In addition to Pitts and Brever, the FBI had announced back on June 16th, 1989 that it had received more than 100 calls in less than 24

hours on the FBI hotline and that “almost all” of them were from people with insider information. US Attorney Norton is quoted in *The Denver Post* by Peter Chronis, “Norton: feds Balked at Flats Jury report,” 4 March 1993. Bob Pence, head of the Colorado FBI office, contradicted this assertion in *The Rocky Mountain News* in an article by Janet Day, “Flats Hotline Gets 100 calls in First Day,” 16 June 1989.

31. Emphasis supplied. Norton’s statement appears at Vol. I, 1081.
32. The Justice Department was often misleading in its statements that criminal fines would be indemnified by US taxpayers. US Attorney Norton stated that “. . . it seemed probable that taxpayers would end up paying for any fine that would be imposed.” Vol. I, 110. Ken Fimberg made similar sworn statements. Ultimately, Edith Holleman, questioning him during the Wolpe congressional hearings, got Fimberg to admit that the Energy Department had never before indemnified a contractor for criminal penalties. Vol. I, 1587. And the Energy Department, during the plea negotiations, had agreed not to indemnify any criminal penalties stemming from Rocky Flats. Department of Energy Memo, 4 September 1991.

Additionally, there are considerable legal arguments against indemnification of criminal penalties, so the repeated statements that indemnification of criminal penalties was a major factor in Norton’s decision to settle the case are dubious. See, Vol. I, 1093 and “For the first time ever, DOE will not pay or reimburse fines,” *The Rocky Mountain News*, 6 July 1997, and Sue Lindsay, “Closed testimony latest page in Flats saga,” *The Rocky Mountain News*, 6 July 1997.

33. Order, 25 September 1992.
34. The *Westword* article breaking the Grand Jury story is “The Secret Story of the Rocky Flats Grand Jury,” Bryan Abas, 30 September 1992.
35. Judge Finesilver’s request that the Grand Jury be investigated is documented in *US News and World Report*, “Just Desserts,” Douglas Pasternak with Ancel Martinez, 14 December 1992 and in his letter to Michael Norton dated 16 October 1992.
36. Norton’s request to the FBI to investigate the Grand Jurors appears in *Time*, “Sometimes it Takes a Cowboy” Michael Lemonick, 25 January 1993.
37. Shortly after the Grand Jury’s press conference, Judge Finesilver did a partial about face and released the Grand Jury Report to the public. Only it wasn’t the Grand Jury Report written by the 23 members of Special Grand Jury 89-2. Instead, Judge Finesilver had allowed the US Attorney’s Office to remove portions of the Report, and to insert their own argument about why the Report was wrong. The prosecutors’ arguments that the Report was wrong were longer than the Report itself. The revised and redacted and rewritten Grand Jury Report was almost impossible to follow. See, Order Regarding Redacted Report of Special Grand Jury 89-2, 26 January 1993.

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Other newspaper coverage of the Grand Jury appears in:

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- Sue Lindsay, “Judge won’t release Rocky Flats report,” *The Rocky Mountain News*, 26 September 1992;
- , “Flats jury asks Clinton for special prosecutor,” *The Rocky Mountain News*, 19 November 1992;
- Editorial, “An angry jury deserves a hearing,” *The New York Times* 1 December 1992;
- Mark Obmascik, “Flats grand jury rebuffed-panel wanted DOE, Rockwell employees indicted,” *The Denver Post*, 30 September 1992;
- , “Flats jurors ask for probe-letter to Clinton requests special prosecutor,” *The Denver Post*, 19 November 1992;
- Bill Scanlon, “Judge releases grand jury paper on Rocky Flats,” *The Rocky Mountain News*, 27 January 1993;
- Matthew Wald, “Bomb plant grand jury seeks inquiry into handling of case,” *The New York Times*, 19 November 1992.
38. The documentation of the Grand Jury’s quest for congressional immunity so they could reveal what the prosecutors had done in the Grand Jury room appears in:
- Adriel Bettelheim, “Gag Flats grand jury, Skaggs says,” *The Denver Post*, 17 November 1993;
- Patricia Calhoun, “It bombed in D.C.,” *Westword*, 19-26 January 1994;
- , “Grand Illusions,” *Westword*, 16 November 1999;
- C. Rustnock Hoover, “Flats jurors may testify in Congress,” *Daily Camera*, 2 December 1992;
- Patricia Schroeder, U.S. House of Representatives, Affidavit in support of the petition of the members of special grand jury 89-2, 25 July 1996;
- Kerri Smith, “Flats jury rocks the system-evidence called insufficient,” *The Denver Post*, 2 July 1997;
- Jonathan Turley, letter to Wes McKinley, 29 March 1994;
- and Bette Bushell, U.S. District Court (Colorado), “Petitioners’ memorandum of points and authorities in support of the petition of member of special grand jury 89-2 for a sealed hearing and a subsequent order removing or modifying continued secrecy obligations,” 1 August 1996;
- Garrison Wells, “Did corporate lobby silence Flats jurors?-major companies afraid of precedent,” *The Denver Business Journal*, 7-13 January 1994.
39. Edith Holleman, in private conversations with Caron Balkany, indicated that the Wolpe subcommittee didn’t have time to fight the immunity battle before the term expired, and that it had made a strategic decision not to pursue testimony from the Grand Jurors since the Justice Department had indicated it would put up an intense battle about the subject.

**Part Two****The Citizens' Investigation Begins,  
1997****Chapter Five****The Cowboy Gets Legal Counsel**

40. Dr. Arjun Makhijani, Dr. John Till, and Dr. LeRoy Moore have discussed the less protective clean-up standards utilized at for the former weapons plant with author Balkany. The Rocky Flats National Wildlife Refuge Act was signed into law by President Bush in December 2001. The National Wildlife Refuge Administration Act, 16 USC 668dd, provides that “. . . wildlife-dependent recreational uses are the priority general public uses of the system and shall receive priority consideration in refuge planning and management.”

Laurie Shannon, Planning Team Leader, US Fish and Wildlife Services, has stated that horse riding, hiking, interpretative tours for school children, wildlife photography, and hunting are all under consideration. See, Caron Balkany's interview with Laurie Shannon, 9 July 2002. The Rocky Flats National Wildlife Refuge Act doesn't include any requirements about the amount of clean-up the Energy Department must do at the Refuge. The Fish and Wildlife Service of the Department of the Interior will just take the land in whatever condition the Energy Department gives it to them. Interestingly, Gale Norton, President GW Bush's selection for head of the Department of Interior which will be overseeing the Refuge, was the Attorney General of Colorado at the time of the Rocky Flats plea bargain.

41. Newspaper articles, with Grand Jury information often provided by Justice Department officials, quickly followed publication of the initial *Westword* article on the Grand Jury Report:

“Rocky Flats Fallout-Congress cuts a deal with the justice department,” *Westword*, 7-13 October 1992;

“Dingell's justice probe is justified,” *The Wall Street Journal*, 22 July 1993;

———, “The jury that wouldn't stay quiet; the pollution that wouldn't go away,” *Covert Action*, Winter 1993-94;

Patricia Calhoun, “The jury is out,” *Westword*, 4-10 November 1992;

Linda Himmelstein, “Finger-pointing at Rocky Flats: ‘runaway’ grand jury in DOJ case,” *Legal Times*, 2 November 1992;

Justice Department, “Environment Division under fire,” *The DOJ Alert*, Vol. 2 No. 10, October 1992;

Michael Lemonick, “Sometimes it takes a cowboy,” *Time*, 25 January 1993;

Sue Lindsay, “Norton barred indictments in Flats case,” *The Rocky Mountain News*, 30 September 1992;

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- Ryan Ross, "The secrets of the Rocky Flats grand jury report," *Denver Digital City News Special*, 2 September 1997;
- Barry Siegel, "Showdown at Rocky Flats," *The Los Angeles Times*, 8 and 15 August 1993;
- Jonathan Turley, "Jurors alone can unravel Rocky Flats mystery," *The Rocky Mountain News*, 18 March 1994;
- Matthew Wald, "Justice Dept. termed too lenient on bomb plant," *The New York Times*, 5 January 1993;
- The Wall Street Journal*, "Review & Outlook: General Dingell," 8 July 1993.
- In addition, the leaked Grand Jury Report was posted on the web-site maintained by the Denver chapter of the Sierra Club, and the redacted Grand Jury Report, with Justice Department argument added, was released by Judge Finesilver on 26 January 1993. None of the Grand Jury Reports - official or revised by the Justice Department - catalogs the evidence or testimony.
42. Many of the facts set forth in Wes McKinley's letter are also found in the government's sentencing memorandum.
43. Information concerning Dr. Carl Johnson's firing appears in:  
 Timothy Lange, "They fired Dr. Johnson," *Westword*, Vol. 4:19, 28 May-11 June 1981;
- LeRoy Moore, letter to Dan Rather suggesting Dr. Johnson's forced resignation as a topic for "Sixty Minutes," 3 June 1981;
- Rocky Flats Action Group, "Johnson fired as Jeffco Health head," *Action: The Voice of nuclear criticism and education in Colorado*, Vol. VI:III, June/July 1981;
- Paul Krehbiel, "Johnson seeks reinstatement," *Citizens Healthwatch*, Jan-March 1982;
- Carl Johnson, MD. vs. Jefferson County Board of Health*, 662 P. 2d 46 (Col. 4/18/98)
44. Oath of the Grand Jury.
45. The sentencing memorandum, the plea bargain, the Justice Department's internal review of the Grand Jury investigation, Caron Balkany's interviews with Ken Fimberg/Scott and with "A Justice Department Prosecutor," and congressional testimony from Fimberg at Vol. III, 194, establish Justice's position that the midnight burning allegations had been a mistake; that the infrared expert had changed his testimony; that the midnight burning had not occurred; and that Karen Pitts and Jacque Brever were not very reliable sources of information.
- Additionally, see:

- Bill Scanlon, "Flats case bedeviled prosecutors; U.S. attorneys say they relied on evidence," *The Rocky Mountain News*, 6 October 1992;
- , "The Good, Bad, and the Unknown from Rocky Flats," *The Rocky Mountain News*, 5 December 1989.
46. FBI Case Status Form, 15 March 1989.
47. These uncontrolled nuclear reactions are incredibly dangerous. They could leave widespread radioactive contamination.
48. Congressman Tom Udall from New Mexico is a cousin of Congressman Mark Udall of Colorado, who, with Senator Wayne Allard, wrote and sponsored the legislation establishing the Rocky Flats National Wildlife Refuge.

## **Chapter Six**

### **Citizens' Investigation Analysis: How the Justice Department Stonewalled Congress, 1992**

49. Bonnie Exner provided background for the environmentalists' reaction to the plea bargain in her interview with Caron Balkany on 23 June 2001.
50. Jennifer Haines, *Bread and Water: A Spiritual Journey*, (Orbis Books, 1997)
51. Bob Roach had worked with environmental activists for many years and was trusted by the Colorado activists to take their concerns seriously.
52. Documentation of the Justice Department's actions under the Reagan and Bush administrations can be found in "Criminal Environmental Prosecution by the United States Department of Justice, Preliminary Report," prepared for The Honorable Charles E. Schumer, Member of Congress, by The Environmental Crimes Project, Jonathan Turley, Director, The National Law Center, The George Washington University, 19 October 1992, and in "Damaging Disarray, Organizational Breakdown and Reform in the Justice Department's Environmental Crimes Program," a staff report prepared for the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, US House of Representatives, December 1994.

See, also:

- The Bureau of National Affairs, Inc., "Environment, DOJ environmental enforcement criticized at House oversight subcommittee hearing," *Daily Report for Executives*, 4 November 1993;
- Sue Lindsay and Janet Day, "Pursuing environmental crime new ground for prosecutors," *The Rocky Mountain News*, 19 June 1989.

Despite the statutes Congress enacted, criminal enforcement of environmental laws wasn't really working either. The Justice Department's interference under the Reagan and Bush I administrations with the EPA's efforts to get tough on environmental crimes was the subject of three con-

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- gressional investigations in the late 80s and early 90s.
53. Named after its Chairman, then-Congressman Howard Wolpe from Michigan, the inquiry's formal name was Hearings Before the Subcommittee on Investigations and Oversight of the Committee on Science, Space and Technology, US House of Representatives. In 1992, led by staff attorney Edith Holleman, this congressional subcommittee undertook an inquiry into the Justice Department's handling of the Special Grand Jury investigation of environmental crimes at Rocky Flats. The Report is on the website at [www.Ambushedgrandjury.com](http://www.Ambushedgrandjury.com).
  54. The Justice Department's refusal to comply with congressional subpoenas is documented throughout the Wolpe hearing transcripts. The Justice Department's refusal to produce the FBI agents for congressional testimony, or to allow Congress to question the FBI or the Justice Department about their decision making process, and the Wolpe subcommittee's refusal to concede this issue fundamental to its oversight responsibilities, are documented throughout the hearing transcripts in Vol. I and II, and in: Congressional Report 103-882, "Report on the Activity of the Committee on Energy and Commerce for the 103d Congress," 2 January 1995; John Dingell, letter to Hon. William Barr, Attorney General, 6 July 1992; ———, letter to Hon. Janet Reno, Attorney General, 12 January 1994; Charles Doyle, Public Law Specialist, Congressional Research Service, memorandum to House Subcommittee on Investigations and Oversight, Re: refusals to disclose to Congress on the basis of Rule 6(e) (matters occurring before the grand jury), 9 September 1992; Charles Mandigo for John Collingwood, FBI letter to Howard Wolpe, Subcommittee on Investigation and Oversight, 9 September 1992; Office of General Counsel, statement to the clerk regarding subcommittee authority to question FBI witnesses, Vol. I, 31; Kelly Richmond, "Justice Dept. probed on Flats-easy-on-polluters charge investigated," *The Denver Post*, 5 June 1993; James Rowley, "U.S. to review its prosecution of polluters," *The Rocky Mountain News*, 9 June 1993; Jonathan Turley, "We need to unearth environmental felons," *The Wall Street Journal*, 11 March 1993.
  55. Lipsky's testimony about the Building 771 incinerator appears in Vol. I, 734-861 and 940. His testimony concerning the settlement negotiations with Rockwell are at Vol. I, 526. Lipsky's testimony concerning his disagreement with the plea bargain and the instructions to him to stop investigating criminal liability of individuals is at Vol. III, 7, 30-36 and Vol. I, 542.
  56. Sanchini, the head of Rockwell at Rocky Flats, died of bladder cancer in late 1990.
  57. At Rocky Flats, the last straw may have snapped when the Energy

Department's Albuquerque office gave Rockwell a \$8.6 million performance bonus in May, 1987, ranking its management "excellent" and its health and safety "very good", despite all the evidence to the contrary. Rockwell's connections with its so-called oversight managers in the Energy Department's Albuquerque Office were so tight that when Energy Department headquarters stepped between them after the raid in 1989 and decreased a bonus award issued by the Albuquerque Office, Rockwell actually sued to get the bonus back. Rockwell's position was that only the Energy Department Office in Albuquerque had anything to say about its bonuses, not Energy Department headquarters in Washington.

Richard Starostecki, from the Energy Department, later stated, "When it comes to award fees, that's really under the direct control of, in this case, Bruce Twining. [Energy Department Albuquerque Area Office] He can unilaterally make decisions on award fees. I can see that there's a problem with the award fee system." Advisory Committee on Nuclear Facility Safety to the U.S. Department of Energy, "Final Report on DOE Nuclear Facilities: A Report to the Secretary of Energy," November 1001.

The documentation concerning the 1987 bonus and Rockwell's lawsuit—*Rockwell International vs. The Department of Energy*, Case # 91-1362, US Court of Federal Claims—to attempt to enforce the bonus when Energy Department headquarters lowered it, includes:

- Thomas Graf and Beth Frerking, "Rockwell won't drop suit against U.S. Energy Dept.," *The Denver Post*, 23 September 1989;
- Award Fee Performance Evaluation Reports, 1 October 86 through 31 March, 1987; Base Fee and Award Fee History, 1987-88;
- Correspondence, Energy Department Albuquerque Operations Office to Dominick Sanchini, Rockwell, 8 December 1988; 27 September 1989; 20 September 1989; 23 February 1990;
- General Accounting Office, "DOE's Award fees at Rocky Flats Do Not Adequately Reflect ES&H Problems," October, 1989.

See, also, Robert Kowalski, "Rockwell 'had heck of a deal'," *The Denver Post*, 25 October 1989 for documentation of the bonus process. Also, Peter Steeth, "Pullout won't hurt Rockwell profits," *The Denver Post*, 23 September 1989, and Linda Rothstein, "Yes, Haste Makes Waste," *The Bulletin of Atomic Scientists*, 5 May 1995. According to XXXX, an Energy Department Safety Officer at the time of the FBI raid, in a 26 April 1991 FBI interview, Rockwell realized several benefits beyond the fees and awards, including: access to classified technology and weapons delivery systems for future development and a minimum amount of corporate overhead.

- 58. Lipsky's congressional testimony in Vol. III, 10-12, 32, 89-91 details the special handling instructions for the "responsible corporate officers" at Rockwell and the Energy Department. Ken Fimberg says the instructions



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about the responsible corporate officer doctrine were from Barry Hartman, Associate Attorney General, not from the Attorney General himself, and weren't anything different from what he would have done anyway, as a matter of fairness. Vol. III, 163.

The Justice Department has no documents concerning the application of the "responsible corporate officer" doctrine to Rocky Flats. Letter, 21 September 1992, from W. Lee Rawls, Assistant Attorney General, to the Honorable Howard Wolpe.

59. A noted environmental attorney and former government prosecutor observed: "[D]efendants seek to convince the courts that convictions should only be appropriate only where the government has proof that the defendant acted deliberately, with knowledge of the law. To date, the appellate courts have generally rejected that view." Helen J. Brunner, "Environmental Criminal Enforcement: Retrospective View," *Criminal Enforcement of Environmental Laws*, *Environmental Law*, Vol. 22: 1315, 1992, at 1327. See also, the United States Supreme Court's observation that "...federal courts have consistently approved jury instructions that allow conviction upon a showing only that the defendant acted intentionally to transport, treat, store or dispose of the waste material.... In effect, these courts have adopted the argument long proffered by the government that, because these statutes are designed to protect the public health and welfare, persons dealing with potentially harmful materials must be presumed to be aware of the regulations. *USA vs. International Minerals and Chemical Corporation*, 402 US 558 (1971).
60. Dick Thornburgh, Attorney General, U.S. Department of Justice, *Ethics Handbook*, "Foreword," 21 March 1989. The other information concerning US Attorney General Thornburgh comes from Jon Lipsky, Vol. III, 91, and from Janet Day, "Thornburgh in Probe Despite Holdings," *The Rocky Mountain News*, 19 June 1989 and from U.S. Environmental Protection Agency, "Rocky Flats," *Report of Investigation*, 9 February 1989, and attorney Rob Hager, long-time nuclear activist.
61. Michael Norton, letter to Howard Wolpe, 2 October 1992.
62. Howard Wolpe, Subcommittee on Investigations and Oversight, letter to Michael Norton, 2 October 1992. The background on Mike Norton's brush with contempt of Congress is documented in Lipsky's interviews with Caron Balkany; in the Wolpe congressional hearing transcript; and in John Brinkley, "Norton avoids contempt charge-Justice Department agrees to allow U.S. attorney to discuss Flats investigation in private," *The Rocky Mountain News*, 6 October 1992.
63. Norton's quoted testimony appears at Vol. I, 1064,1074, and Vol. III, 321.
64. However, the prosecutors had written at least two draft indictments and sent them to headquarters. It is unlikely that draft indictments get written about "marginal, questionable" cases. Ken Fimberg's testimony appears in

Vol. I, 1481-1484, and Vol. III, 115, 117, 140, 154, 163-168, and 211-212. Ken Fimberg documents the two draft indictments in his congressional testimony at Vol. I, 1349. See, also, "The Secret Story of the Rocky Flats Grand Jury," *supra* at endnote 34.

There simply wasn't enough evidence to indict Energy Department officials, Fimberg repeatedly insisted. And they hadn't indicted Rockwell individuals, either, because the cases were "marginal," "questionable," and because it wasn't fair: the Energy Department culture had promoted the law-skirting, law-breaking activities, and Rockwell individuals were simply acting consistently with what the Energy Department had asked for over the last 40 years.

Chairman Wolpe was concerned with this interpretation of culture as a defense to criminal charges. "I get real nervous about this cultural argument raised in a legal context as a matter of fairness as you've put it. . . . This is the Nuremberg kind of defense."

But Fimberg stuck to his position. It just wasn't fair.

Fimberg also fielded questions about the linkage between the plea bargain and dropping individual indictments, something prohibited by the US Attorney's Manual. Fimberg admitted that the prosecution team had discussed at the end of 1990 that they might accept a corporate-only plea, with no indictments of individuals. And he admitted that the Justice Department had discussed the fact that a settlement with Rockwell was probably unlikely if they insisted on going after individuals. And as of 1990, they all felt a settlement was the best option.

Fimberg admitted that Rockwell's attorneys were constantly making a linkage to a corporate plea and no individual indictments.

The lack of any indictments against Energy Department officials had a different explanation. Fimberg testified after Lipsky, and he told the congressional subcommittee that everyone had agreed there was not enough evidence to indict Energy Department officials.

Even Lipsky agreed, said Fimberg.

Lipsky shakes his head angrily whenever this is mentioned. "That is simply not true," he says. "I never agreed. They never asked me, because they knew I wouldn't agree."

65. Balkany's conversations with Edith Holleman provide the background for the sections on the Wolpe investigation and the Wolpe Report. An example of the problems created by the Justice Department's delay tactics is Sanchini's memo pads and the FBI's written list of questions concerning them. The congressional hearing transcript includes the FBI's questions, Vol. II, 470-529, but not the actual memo pads. This is because the FBI did not turn the diaries over to Congress until after the hearings were concluded and the Wolpe Report already released. See the 14 January 1993 letter to Edith Holleman from John Collingwood, Inspector in Charge,

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Office of Public and Congressional Affairs, FBI, transmitting the memo pads. Vol. II, 99.

66. The Justice Department's official position is set forth in an April 8th, 1994 memorandum from Mark Dubester, Acting Chief, Public Corruption/Government Fraud Section, US Attorney's Office for the District of Columbia, to Associate Attorney General Webster Hubbell.

## Chapter Seven

### **Citizens' Investigation Analysis: Wes McKinley's Congressional Campaign, 1996**

67. Go to [www:NIRS.org](http://www.NIRS.org), the website for Nuclear Information and Resource Services, which spearheads the citizen campaign in the US against recycled radioactive metals.
68. LeRoy Moore, in a private communication with Caron Balkany, indicated that Alex Mayer did not walk around barefoot, but that perhaps Wes thought so because Alex wore sandals in summer. Alex also held a graduate degree, and had run his own business and was a beloved and longtime member of the peace community in the Denver-Boulder area.
69. Bryan Abas' offer to the House Energy and Commerce Committee, Investigations and Oversight Subcommittee was made on 8 June 1993. The Citizens' Investigation obtained a copy of excerpts of the Grand Jury transcript from an anonymous source in the mail. In it, Assistant US Attorney Ken Fimberg told the Grand Jury: "And if the government attorneys, if Mr. Murtha and Mr. Norton and I and others that are involved in reviewing this matter have decided that this cannot be done in good faith under the governing law, it's our obligation not to pursue criminal charges." Foreman McKinley asked: "What happens if the Grand Jury does not follow the recommendation?" Fimberg responded: "I am not sure what you want to do with it, but it will not be a prosecution." Other legal experts disagree, claiming that while prosecutors have the obligation not to start an investigation if they do not in good faith believe the matter should be prosecuted, this refers to the prosecutors' discretion in filing an information or convening a Grand Jury to begin with. Once a Grand Jury decides to indict, the only thing a prosecutor should do is bring the charges as recommended by the Grand Jury and then move to dismiss them if the prosecutor feels they are not supported by probable cause. A judge should make this determination in open court. See, Linda Himmelstein, *Legal Times*, 2 November 1992.
70. Greg Lopez's article is titled "From cattle trail to campaign trail, Cowboy plans to ride for 4th District seat and spill the beans on Flats investigation,"

*The Rocky Mountain News*, 31 December 1995.

71. The Justice Department threats were discussed in private conversations between Caron Balkany and Edith Holleman.

## **Chapter Eight**

### **The Citizens' Investigation Continues—Some Small Successes, 1997-2000**

72. *Concerned Citizens for Nuclear Safety vs. Department of Energy*, etc., Case # 94-1039 M, US District Court for New Mexico.
73. Caron Balkany's interviews with LeRoy Moore, Rocky Mountain Peace and Justice Center, document the history of the Future Site Working Group.
74. *The Savannah Morning News*, 23 November 2001.
75. In this type of contract, taxpayers foot the bill for all costs, even for mistakes, plus pay a fee to Rockwell just to open the doors, plus pay bonuses based on specific performance criteria. In the 1980s, this was usually for increased production of bomb triggers. The operative contract at Rocky Flats was DOE CO4-76DP03533, and its modifications. William Rask, the Director of the Production Division for the Energy Department at Rocky Flats, and one of the high level Energy Department officials the Grand Jury had wanted to indict, gave an interview to the Energy Department Inspector General in the criminal investigation, stating that "...spending more money meant a greater percentage of the Cost Plus Award Fee (CPAF) contract money for Rockwell." See, Office of Inspector General, US Department of Energy, Memorandum of Interview, Case File No.90DN005, 4 December 1990, taken by Special Agent Robert Scherer.
76. The reports from the Government Accounting Office include: "Nuclear Health and Safety; Oversight at DOE's Nuclear Facilities Can be Strengthened," GAO/RCED-88-137, 8 July 1988; "Environmental, Safety and Health Oversight of the Department of Energy's Operation," GAO/T-RCED-88-30, 31 March 1988; "Key Elements of Effective Independent Oversight of DOE's Nuclear Facilities," GAO/T-RCED-87-93, 14 April 1987; "Environmental, Safety, and Health Oversight of DOE's Operations," GAO/T-RCED-87-12, 25 March 1987; and "DOE's Safety and Health Oversight Program at Nuclear Facilities Could be Strengthened," GAO/RCED-84-50, 30 November 1983.
77. The letter from Karen Pitts to Wes McKinley is dated 18 September 1999.
78. See, Renee B. Lettow, "Reviving Federal Grand Jury Presentments," *The Yale Law Journal*, Vol. 103:133, 1994.
79. Caron Balkany interviewed Ken Fimberg/Scott at The Hague in the summer of 2000.
80. The documentation that radiation surveys were taken shortly after the

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raid is in:

Peter Chronis, "Cameras, sensors to survey Flats site," *The Denver Post*, 28 June 1989;

———, "Plutonium cancer risk 'negligible'," *The Denver Post*, 28 June 1987;  
Janet Day, "Rocky Flats is focus of aerial survey," *The Rocky Mountain News*, 8 July 1989;

Department of Energy, "DOE aerial survey over the Rocky Flats plant," press release, \_\_\_\_.

The radiation surveys are:

EG&G Energy Measurements (for the U.S. Department of Energy), "An aerial radiological survey of the United States Department of Energy's Rocky Flats plant," August 1981;

———, "An aerial radiological survey of the United States Department of Energy's Rocky Flats plant," July 1989;

———, "A multispectral scanner survey of the U.S. Department of Energy's Rocky Flats plant, Golden, Colorado," June-July 1989;

———, "In situ surveys of the United States Department of Energy's Rocky Flats plant, Golden, Colorado," August 1990, October-November 1990, and November-December 1990;

US Department of Energy Special Assignment Environmental Team, "Assessment of Environmental Conditions at the Rocky Flats Plant, Golden, Colorado," August 1989.

81. Chairman Wolpe's comments appear at Vol. I, 665.

82. John Till's conversations with Caron Balkany started in August, 2001 and continued intermittently for several months thereafter.

83. Some of the reports which we reviewed include: John Till, Principal Investigator, Radiological Assessments Corporation:

"Estimated Airborne Releases of Plutonium during the 1957 Fire in Building 71," [later re-named Building 771] August 1999;

———, "Estimated Airborne Releases of Plutonium during the 1969 Fire in Buildings 776-777," August 1999;

———, "Characterization of Releases to Surface Water from the Rocky Flats Plant," Revision 1, August 1999;

———, "Development of the Rocky Flats Plant 903 Area Plutonium Source Term," Revision 1, August 1999;

———, "Estimated Exposure and Lifetime Cancer Incidence Risk from Routine Plutonium Releases at the Rocky Flats Plant," Revision 1, August 1999;

———, "Evaluation of Environmental Data for Historical Public Exposures Studies on Rocky Flats," Revision 1, August 1999;

———, "Review of Routine Releases of Plutonium in Airborne Effluents at Rocky Flats," August 1999;

———, "Comprehensive Assessment of Exposure and Lifetime Cancer

- Incidence Risk from Plutonium Released from the Rocky Flats Plant, 1953-1989," September 1999;
- , "Technical Summary Report for the Historical Public Exposures Studies for Rocky Flats Phase II," September 1999;
- , "Radionuclide Soil Action Level Oversight Panel-Independent Calculation," February 2000;
- , "Radionuclide Soil Action Level Oversight Panel-Technical Project Summary," February 2000.
84. According to Edith Holleman, Murtha was always trying to rein in the investigation and keep Fimberg from pressing too hard for a win.
85. On debarment issues see:  
Charles Hartt, Senior Vice President, General Counsel and Secretary, Rockwell International Corp., letter to John Easton, Acting General Counsel, DOJ, "regarding pending settlement discussions...with suggested language...", 18 September 1991;
- Silas Fisher, Director, Office of Procurement, Assistance and Program Management, DOE, letter to Donald Beall, Chairman and CEO, Rockwell Intl. Corp., 3 April 1992.
86. The problematic EPA enforcement history at Rocky Flats is detailed by Bryan Abas in "The State Knew it and Blew it," *Westword*, 21-27 June 1989.
87. Caron Balkany interviewed Detective Sergeant Ted Schoudt on 26 June 2001.
88. Ultimately, the court entered an order that the Energy Department could no longer burn hazardous waste at Building 771 without complying with environmental laws. The Sierra Club won a total victory, basically doing what the EPA or the State of Colorado should have done years before. "EPA and the State did not have the political courage to do it," said Adam Babich, the Sierra Club's attorney. *Sierra Club vs. Rockwell International and the Department of Energy*, Case # 89-B-1181. See, also, Mark Obmascik, "Flats violated US Laws Judge Rules," *The Denver Post*, 17 April 1990.
89. See, Janet Day, "Flats' Worst Threat May Lie Underground," *The Rocky Mountain News*, 23 July 1989.
90. A search warrant must be supported by evidence that a crime has been committed (probable cause). You can't just ask a judge for a search warrant. So the multi-page affidavit in support of the search warrant, sworn to by Lipsky, is full of facts and demonstrates that the Justice Department already had lots of evidence of the culpability of Energy Department and Rockwell officials before the search warrant was even issued and before the Grand Jury was impaneled.
91. US Attorney Norton tried this legal maneuver unsuccessfully. The US Attorney's Office filed the Motion to Stay 6 June 1989 in *Sierra Club vs. United States*, US District Court for Colorado, Case # 89-B-1181; the Motion was denied 30 June 1989. See also, Janet Day, "Poisoned Air From

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Flats feared," *The Rocky Mountain News*, 8 June 1989. Interestingly, Norton also represented to the judge that he could not vouch for the accuracy of some of the pleadings filed by the US Justice Department concerning the incineration of plutonium-contaminated waste. The Affidavit and Application for Search Warrant reveals that the US Attorney's Office in Colorado had become aware of the inaccuracies in the Justice Department representations to the court by at least 6 June 1989.

92. On 26 March 1992, at the time the sentencing memorandum was filed, the prosecutors had already read the Grand Juror's Draft Report dated 18 February 1992 and their proposed indictments, and knew that the Grand Jury disagreed. See, *Westword* and *The Los Angeles Times*, *op. cit.* at end-note 41.
93. The background on the civil lawsuit by Rocky Flats' neighboring landowners and the Department of Justice artifice to obtain a clean bill of health for Rocky Flats appear in *Church, McKay vs. USA*, Civ. Action # 75-M-1162, US District Court, District of Colorado, including:
  - Government defendants' response to plaintiffs' pretrial statement, 29 June 1984;
  - Report on settlement, 16 November 1984;
  - Motion to enter findings, 15 February 1985;
  - Position statement of defendant board of county commissioners of Jefferson County, Colorado, 23 April 1985;
  - Statement concerning motion to enter findings, 24 April 1985;
  - Findings of fact and conclusions of law, 3 July 1985;
  - Affidavit of returned material, Howard Holme, 30 September 1985;
  - Exhibit 1: Church's objections to the responses of Dow, Rockwell and the U.S. to Church's interrogatories of 21 December 1976, dated 15 February 1977.
94. The Department of Housing and Urban Development had issued warnings back in 1979 that land around Rocky Flats was contaminated with plutonium, assertedly below the applicable EPA guidance levels. There were also plans to limit the amount of development near the perimeter of the Plant in the interests of rapid evacuation in the event of another fire or other emergency.
95. Dr. Carl Johnson's letter appeared in *The Denver Post* on 11 February 1985.
96. The pattern of Justice Department cover-ups of crimes committed within other federal agencies appears in Vol. 1, 33-39, and includes allegations of cover-ups by the Justice Department of FBI and EPA criminal conduct.
97. Mike Norton's assertions that the most serious crimes had been charged were made several times, including Vol. I, 1064 and Vol. III, 317.
98. According to Professor Jonathon Turley, "The only information [about the Rocky Flats Grand Jury investigation] that remains under seal is information revealing the possible misconduct and mismanagement by the Justice

Department in this case. Rule 6(e) was never intended to shield this type of information, which belongs before Congress and the public, and not in the hands of those officials involved in the controversy." Professor Turley's comments appear in "Petitioners' Memorandum of Points and Authorities in Support of the Petition of Members of Special Grand Jury 89-2 for a Sealed Hearing and Subsequent Order Removing Or Modifying Continued Secrecy Obligations," *In re Special Grand Jury 89-2*, Miscellaneous Case #: 96-\_\_\_.

## **Chapter Nine**

### **Flashbacks from Wes' Journals: Inside the Grand Jury Chambers, 1989-1992**

99. After the Justice Department decided that the Grand Jury Report should not be released, Judge Finesilver ruled that presentments are outmoded and that only indictments brought by prosecutors can be used to charge crimes, so the Grand Jury's presentment would be sealed along with the Report. *In re Rocky Flats Grand Jury*, 813 F. Supp. 1451 (D. Colo. 1992 ) This, despite the fact that the United States Supreme Court has recognized that the power of the Grand Jury predates the Constitution (much less the Justice Department) and was preserved by that document. *Blair v. United States*, 250 U.S. 273 (1919).
100. Congressional testimony from Peter Murtha, Vol. III, 226 and 239, and Mike Norton, Vol. III, 346, indicates that by October, 1991, the Justice Department had vetoed the issuance of a Grand Jury Report. The judge met with the Grand Jury in December, 1991. Judge Finesilver has not responded to requests by author Balkany for an interview.
101. Apparently, one of the concerns Ken Fimberg had about the Grand Jury's report was that it accused EG&G, which took over after Rockwell, of continuing to commit crimes. See, "Redacted Grand Jury Report," and "Analysis of Rocky Flats Grand Jury Report," Ken Fimberg to Mike Norton and Peter Murtha, 11 March 1992. The law states that a Grand Jury Report could be permissible if there were evidence of on-going criminal activity. So, if EG&G and the Energy Department had continued to commit crimes, as Rockwell and the Energy Department had done previously, this provision could be satisfied, and the court might rule that the Grand Jury Report could be made public, something Justice Department headquarters had decided should not occur.

In fact, many of the same types of problems did persist after EG&G took over. Disabling safety alarms had been a frequent complaint during Rockwell's tenure and continued when EG&G took over. This endangered workers, but sped up production. See, XXXX, *FBI Interview*, 1 March



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1991, discussing a foreman's orders to de-sensitize the alarms while Rockwell had been running Rocky Flats, and News Release, EG&G Rocky Flats Inc., 28 August 1991, discussing the ongoing problem of tampering with the alarms.

Another example of the continuation of criminal activity involved the contamination by EG&G of a visiting team of experts who were conducting a safety inspection. It was almost identical to a contamination incident which had precipitated the closing of Building 771 in October 1988 when Rockwell was operating Rocky Flats.

The FBI investigated this incident; the Energy Department wrote itself memos and chastised its employees and contractors for putting production ahead of safety and for communication problems. No criminal charges were filed. Vol. I, 694-696. Karen Pitts and Jacque Brever brought this incident to the FBI's attention.

A letter from Grand Juror Ken Peck to Wes McKinley 31 March 1992 refers to similar waste storage crimes continuing after Rockwell left Rocky Flats and EG&G took over. In fact, what the regulatory agencies did is make legal the same conduct Rockwell was being prosecuted for as long as EG&G agreed to try to fix it. See, also, EG&G press release, 17 June 1992, re Notice of Violation for 56 issues from 1990-1992.

102. Wes McKinley and Clerk James Manspeaker waited several hours for US Attorney Michael Norton to come and explain how he got the copy of the draft Grand Jury Report, as Norton had agreed he would do. Norton never showed.

## Chapter Ten

### The Citizens' Investigation Continues, 2001

103. XXXX gave interviews to the FBI and the EPA on 26 October 1989 and 16 February 1990.
104. For instance, according to the "Assessment of Environmental Conditions at the RFP," August, 1989, US DOE Special Assignment Environmental Team [Tiger Team]: "There are deficiencies in the ambient air monitoring program for radionuclides. As a consequence, the accuracy of measured concentrations of plutonium in ambient air are questionable. These data are reported monthly and annually, and are used in calculating annual radiation dose to the public to confirm dose calculations that are made based on radioactive effluent emission data."

The team noted that equipment calibration had not been done since the 1970s and that the air emissions monitoring program does not comply with the Clean Air Act or other legal requirements and does not present an accurate picture of the radioactive air emissions. The plant did not analyze

for uranium or for americium 241. The sampling equipment is more than 15 years old.

The Tiger Team observed: "The assessment of the RFP [Rocky Flats Plant] contribution to the public radiation dose as reported [by Rocky Flats as a regulatory requirement] . . . does not fully address all potential exposure pathways and radionuclides. The quality assurance and quality control practices for radiochemistry analyses in the Building 123 HS&E laboratory...cannot adequately verify the validity of analytical results. Chemistry Standards lab also non-complying. General lab for radiochemistry analysis non-complying. Information provided to the EPA concerning releases of chemicals is false. It indicates the chemicals have actually been measured, when in fact they are based on estimates and assumptions."

105. The background on the inability of the Energy Department to self-regulate was provided by former Rep. David Skaggs in an interview with Caron Balkany on 6 December 2001 and in Caron Balkany's interviews with Dr. John Till in the summer of 2001. See, Linda Cornett and Bill Scanlon, "Agents probe allegations at Rocky Flats," *Daily Camera*, 7 June 1989 and Joan Lowry, "Flats Accident Possible Says Report," *The Rocky Mountain News*, 7 October 1989.
106. Peter Murtha discussed the Unitary Executive Policy at Vol. I, 1181. Bruce DeBoskey, a Denver environmental attorney, in an interview with Caron Balkany on 19 September 2001, provided details of the Energy Department's concern over the citizen suit provisions of the environmental statutes. This is confirmed in an undated internal Energy Department memorandum to Undersecretary of Energy Mary Walker which was leaked in 1987 and which helped motivate the FBI to investigate Rocky Flats, according to Jon Lipsky, Vol. I, 399. The unnamed Energy Department official states:

*"GC's [general counsel] real fear of the EPA being able to issue an order under RCRA is that the order would allegedly be subject to citizen suit enforcement. The order, being final and valid on its face, would be prime material for a successful summary judgment motion, GC maintains."*

107. The EPA's response to the Citizens' Investigation FOIA request included the following documents: Internal letter, Rockwell International, from C.R. Rose to W.D. Crossland, re: Building 771 main exhaust plenum utilization and upgrading, 8 April 1982; M.L. Huber, Rockwell International, Building 771 incinerator Study, 2 January 1980; Preliminary Analysis, Air Pollution Control Division, Colorado Department of Health, 11 July 1985; Unsigned, undated Incinerator History; Unsigned, Incinerator Fact Sheet, 12 November 1987.
108. Janet Day reports in *The Rocky Mountain News*, "Officials in the Dark on plutonium burning," 23 January 1987, that the State of Colorado didn't

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know about the incineration of plutonium contaminated waste until 1987.

**Chapter Eleven****Jacque Brever, 2001**

109. Feeding the ducks radioactive waste is also documented by FBI interviews with XXXX, 17 October 1990 and with XXXX, 5 June 1990, as well as in an FBI phone interview with an anonymous female caller, 8 June 1990.
110. The list of FBI interviews is in Vol. I, 417.
111. The Energy Department's report is called "Analysis of Building 771 Incinerator," 19 June 1989, from Ronald Gersten to the Department of Energy, Acting Manager of Rocky Flats.

The main reasons the Justice Department gave for dropping the secret midnight plutonium burning charges was because the infrared analyst had changed his position, the prosecutors couldn't corroborate Pitts and Brever's testimony, and because if the incinerator had been run, lots of people would have known about it. See, Memorandum from Mark Dubester, Acting Chief, Public Corruption/Government Fraud Section, US Attorney's Office for the District of Columbia, to Associate Attorney General Webster Hubbell, 8 April 1994. No co-worker interviewed by the FBI actually admitted to being involved in the illegal work on the incinerator. However, reliance on the failure of these co-workers to incriminate themselves by admitting they had worked on the incinerator during the shutdown is questionable. These workers had already been warned about being "whistleblowers." Brever, *op. cit.*, *FBI Interview*, and XXXX, *FBI Interview*, 14 September 1989.

And none said they'd actually seen the incinerator and had first hand evidence that it hadn't been operating, or stated any mechanical reason that it couldn't have been operated the shift before. Instead, they simply provided conclusions that it had been shutdown, with no first hand information.

One of these three Rockwell employees at first stated that she remembered working with Pitts and Brever taking down the incinerator as Pitts and Brever had explained to the FBI; she recalled the same co-workers as did Pitts and the same processes, including the removal of many of the filters.

This employee admitted to working a great deal of overtime from October 1988 through April 1989, and said that the event being described could have occurred during any of that time; she wasn't sure of the date. She was sure that the incinerator had been run the day before the date when she worked with Pitts and Brever, but did not know when that was. See, XXXX, *FBI Interview*, 16 June 1989.

The date of the second interview was 14 September 1989, the same date that two co-workers intentionally contaminated Jacque Brever with

plutonium and then laughed at her about it. Word was all over the Plant that Pitts and Brever were in a lot of trouble for cooperating with the FBI. Jon Lipsky had noted during the first interview that XXXX was "VERY SCARED." By the second interview, XXXX stated that she had "never worked on the incinerator in Building 771 with BREVER or PITTS in December of 1988."

112. See, Defendant Rockwell's sentencing memorandum.
113. Rockwell's position is set forth in its 7 September 1989 letter to the US Attorney's Office, Vol. III, 68-80.
114. The report stated: "Analysis of the plant liquefied gas logs shows that only normal evaporation losses (about two inches per day) occurred during the 9-10-88 to 2-24-89 period." Jon Lipsky's testimony concerning the oxygen logs is in Vol. I, 753-763,773.
115. "The December 1988 data is similar to June, July, August and September, 1988 and also the end of February and March, 1989." The Energy Department admitted that the incinerator operated in July, August, September, 1988 and February and March, 1989.

## **Chapter Twelve**

### **Special Agent Jon Lipsky, 2001**

116. The correspondence between the FBI and Caron Balkany is dated 16 August 2001 and 1 October 2001. There were also several telephone calls.
117. The FBI memo to Special Agent Lipsky is dated 15 August 2001.
118. Chairman Wolpe's statements about retaliation are in Vol. I, 655.
119. Barry Siegel, "Showdown at Rocky Flats," *The Los Angeles Times*, 8 and 15 August 1993.
120. "A Justice Department Prosecutor" advised Caron Balkany concerning the Justice Department's ethical position about settlement under these circumstances.
121. Starting in December, 1990, Rockwell had insisted that there be no individual indictments if the case were to be settled, and by December 1990, the Justice Department and Ken Fimberg had decided that settling the case was the right approach. Vol. III, 196. Other attorneys, including author Balkany, believe that the case is one that should have been tried not settled, that citizens had a right to know what had been going on at Rocky Flats and that a jury of Colorado citizens was the best place to decide the criminality of that conduct, not behind closed doors at the Justice Department.
122. The US Attorney's Manual requires prosecutors to conduct a complete investigation before settling charges. Also, as Ken Fimberg was to acknowledge in an affidavit filed in *Cypher vs. United States*, Civil Action

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91-W-171, USDC, Colorado, 1991, a case where one of the Rockwell workers had sued him for harassment, the United States Supreme Court has ruled that “[a] grand jury investigation is not fully carried out until every available clue has been run down and all witnesses examined in every proper way. . . .”

The documentation that the prosecutors decided not to charge any individuals before the investigation had even been completed is found in testimony from Jon Lipsky at Vol. III, 30-39, and 62, in the Wolpe report. High-level Energy Department officials had not been interviewed even as of 30 April 1991. See, Norton, in Vol. I, 1063 and Vol. III, 306, and an internal EPA memo from William Smith concerning a Sixteen Month Status report on the case, 30 April 1991, Vol. I, 1133. The proffers from targets did not occur until the summer of 1991. Vol. III, 137.

123. The environmental statutes do not cover purely radioactive materials at US weapons plants. Only the Atomic Energy Act regulates them, and that is enforced by the Energy Department, not by any independent source. That left the Energy Department free to do pretty much whatever it wanted at the weapons complexes, until the EPA and the states asserted their authority to regulate wastes contaminated with both radioactivity *and* hazardous components.
124. Norton’s testimony that he’d never discussed the substance of the case with Energy Department officials is at Vol. I, 1109.
125. The 28 March 1991 memo Balkany gave Lipsky is from the Energy Department General Counsel to the Deputy Secretary of the Energy Department.
126. Documentation that Rockwell required the official statements in the plea bargain is found at Vol. I, 1237. At the time the sentencing memorandum was filed, the Grand Jury’s disagreement was still secret, their Report was still secret, and none of the prosecutors apparently thought their deal would come under intense public and congressional scrutiny. Afterwards, after the Report was leaked and subpoenas were issued, US Attorney Norton, without explanation, partially backed off his inaccurate statements in the sentencing memorandum, with a qualification:
- “ . . . we found no evidence of any significant off-site physiological threat to the environment or to the public health *not already known to the regulators*, and therefore the subject of various regulatory or clean-up agreements.” (emphasis supplied) See, 23 September 1992, “Statement of Michael J. Norton,” issued by the Justice Department.
- Even with the new and belated qualification, the statement is inaccurate, according to Grand Jury sources and Special Agent Lipsky.
127. Rockwell made good use of the Justice Department’s statements that there’d been no secret midnight plutonium burning to advance its efforts to settle the case without individual criminal indictments. See, Rockwell’s letter to Dick Thornburgh, US Attorney General, 6 May, 1991.

128. The Energy Department Memorandum for the Record agreeing to no debarment of Rockwell is dated the same day the Grand Jury was discharged. See, Berton J. Roth, Deputy Director, Office of Procurement, Department of Energy, Memorandum for the Record, 24 March 1992.
129. The letter from the Justice Department to Rockwell's attorneys declining to intervene in the Stone false claims lawsuit was signed the same day as the Plea Agreement. Michael Hertz, US Department of Justice to Bryan Morgan, 24 March 1992. Rockwell had been demanding for some time that the Justice Department not intervene in the Stone false claims lawsuit. Vol. III, 365-366.
130. Thane Hendrix, from EG&G, at the request of the Energy Department FOIA Office in Las Vegas, Nevada, gave the authors the information on the radiological surveys at Rocky Flats and the absence of any search for strontium.
- The articles documenting strontium in the groundwater are in *The New York Times*, 15 June 1989 and *The Rocky Mountain News*, 16 June 1989; 21 July 1989; and 12 August 1989.
131. Some newspaper articles concerning the criticality rumors and the Energy Department's efforts to deflect them are:
- Staff article, "Flats denies N.Y. Times' reports of radioactivity," *The Rocky Mountain News*, 15 June 1989;
- , "DOE experts seek source of elements at Flats," *The Rocky Mountain News*, 21 July 1989;
- Janet Day, "Probe dispels tales of nuclear accident, scientists find no evidence of long-ago fires, reactions at Rocky Flats," *The Rocky Mountain News*, 12 August 1989.
- Department of Energy, press release, "DOE to fly aerial survey over the Rocky Flats nuclear weapons facility," 16 June 1989;
132. The status reports are dated 20 October 1989 from William Smith to the Acting Director of EPA's National Enforcement Investigation Center. The agenda for the 8 July 1990 Hartman/Norton meeting does not include discussion of falsified laboratory testing or false statements as issues of interest to the investigation.
133. Rockwell faced significant legal and monetary exposure from civil lawsuits claiming personal contamination and property damage from Rocky Flats' operations.
134. An FBI interview with Mike Bartelson, Director of Water Resources, City of Broomfield, on 6 February 1991, documents the City of Broomfield's concern about Blue Baby syndrome. The towns of Westminster and Broomfield also changed their drinking water supplies so as not to receive water from Rocky Flats. This cost millions of dollars, paid for by the Energy Department.

Plutonium contaminated sediment is known to lie at the bottom of

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Standley Lake. John Till, private conversations with Caron Balkany. And although the prosecutors emphasized and repeated that there was no off-site contamination and no problems with the drinking water supplies, prosecutor Fimberg had told Jon Lipsky that the reason there were no charges based on off-site contamination from nitrates "...wasn't because there were no nitrates in the water; he told me there were just no regulations about them." This is not accurate; the nitrate standards of the Clean Water Act had been in effect since the 1970s.

135. According to LeRoy Moore, Ph.D., of the Rocky Mountain Peace and Justice Center, the Energy Department has never adequately characterized the type or amount of waste at Rocky Flats, and has no plans to do so. This means the clean-up plans are based almost entirely on data collected in the past by the Energy Department and its defense contractors, and on assumptions. It has already been shown that at least some of the data and assumptions are incorrect.

The decades of secrecy and cheating can mislead even well-intentioned and objectively conducted studies, and can result in mistakes in development of the clean-up plans for Rocky Flats. The tritium analyses reflected in the "Technical Summary Report for the Historical Public Exposures Studies for Rocky Flats Phase II," Risk Assessment Corporation, September 1999, are an example.

Tritium is a radioactive isotope of hydrogen with a 12.5 year half-life that emits low energy beta particles as it decays. Tritiated water is its most common form when found in the environment. In the technical summary report, the dose reconstruction team estimated the dose to the public from tritium based on the assumption that there was no tritium production at Rocky Flats. This is what the team had been advised, and based on this information, Dr. Till, as principal Investigator, concluded that, "Tritium was not produced at the RFP, but it has been released accidentally from the RFP on several occasions during processing of tritium-contaminated scrap plutonium from Lawrence Livermore Laboratory." See, Technical Summary report, *ibid*.

However, the information that Rocky Flats did not produce tritium is contradicted in a 7 June 1991 interview by Special Agent Lipsky with XXXX, a chemical engineer then recently retired from Rocky Flats after approximately 40 years. XXXX stated: "Due to the ongoing practice of conducting Classified projects at Rocky Flats, tritium was produced and disposed of at the plant, in the area of the 207 ponds."

There was also a Project Rover in the 1950s, an effort to develop a nuclear powered rocket. We do not know how much if any of Project Rover was actually developed on-site at Rocky Flats. This information would be important to the development of proper clean-up methodology.

136. Private conversations between Caron Balkany and attorneys Peter

Nordberg, Bruce DeBoskey and Steve Kelly in 2002 provide the background about *Cook vs. Dow Chemical, Rockwell International, and The United States of America* Civ. Action # 90K-181, United States District Court, District of Colorado.

137. The attorneys representing the Energy Department's contractors have billed the government over \$32 million in attorney's fees so far. In fact, the billing was so outrageous that two congressional hearings were held to try to hold them in line. Former independent prosecutor Ken Starr is a main partner in that law firm. See, John Brinkley, "Flats lawyers have high time at taxpayers' expense," *The Rocky Mountain News*, 13 July 1994. The congressional investigation determined that lack of Energy Department oversight let the defense contractors and their lawyers bill for pretty much whatever they wanted.
138. The testing obtained by plaintiffs' counsel in that class action indicates that: "People living near the Rocky Flats facility were exposed to radionuclides and other chemicals, such as beryllium, discharged from the plant over the period of its operation." Radford, Edward, MD, "Comments on Medical Monitoring of People Exposed to Hazards From Rocky Flats Nuclear Facility in Colorado."
139. *In Re Special Grand Jury 89-2*, Miscellaneous Case #: 96-\_\_\_\_.
140. The study referred to is by the Colorado Central Cancer Registry, Emergency Medical Services and Prevention Division (Colorado Department of Public Health and Environment), "Ratios of cancer incidence in ten areas around Rocky Flats, Colorado, compared to the remainder of metropolitan Denver, 1980-89 with update for selected areas, 1990-95," A Report to the Health Advisory Panel on Rocky Flats, 1998.
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- , "Report on radiation's harm spurs nuclear plant study," 22 December 1989.
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- Eileen Welsome, "This place is a dump!" *Westword*, 27 July 2000.
141. Bernd Franke provided the analysis of the Colorado cancer incidence study.
142. See Dr. Johnson's papers at endnote 3. See, also information from other writers, including:
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- L.D. Hamilton, "Alternative interpretations of statistics on health effects of low-level radiation," a rebuttal of Johnson's findings, in *The American Statistician*, Vol. 37:4, November 1983;
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144. Clapp, Richard, MPH, D. Sc., 13 November, 1996.
145. Arjun Makhijani reports the Energy Department plans for the conversion of waste dumps to playgrounds and wildlife refuges. See, EPA's *Superfund Redevelopment Initiative* (1999); the DOD's *Fast-Track Clean up Program* (1996); and the DOE's *Accelerating the Paths to Closure Program* (1998). All three programs have a priority on placing Federal Facility Superfund sites into re-use "as expeditiously as practicable." EPA fully supports recreational use stating, "Use of a site may give a community greater recreational opportunities by providing ball fields, playgrounds, historic or cultural centers, or scenic hiking trails." See, Federal Facilities Restoration and Reuse Office Library. Downloaded 07/20/03.
146. The affidavit, which Lipsky never signed, is at [www.Ambushedgrandjury.com](http://www.Ambushedgrandjury.com).
147. The lawsuit against Ken Fimberg is *Cypher vs. USA*, Civil Action 91-W-171, USDC, Colorado, 1991.

## Chapter Thirteen

### We Prove the Justice Department Cover-Up. Now What?

148. The infrared reports can be seen at [www.Ambushedgrandjury.com](http://www.Ambushedgrandjury.com). They are formally known as "Emergency Report, Department of Energy Rocky flats Plant," Golden, Colorado, February 1989, and "Aerial Photographic Analysis of the Department of Energy Rocky Flats Plant," Golden, Colorado, May, 1989.
149. See, Caron Balkany's interviews and correspondence with the infrared analyst, Al Divers, on 7 November 2000, 4 March 2001, 10 April 2001, 8 August 2001, and 21 August 2001, as well as Mr. Divers' FBI interviews, 2 January 1989 and 5 January 1989.
150. "Prosecutors don't do that," said congressional subcommittee staff attorney Holleman. "They don't have to present anything but their best evidence, so it's very unusual that they would put on testimony to undermine their own witnesses. Especially right in the beginning."
151. Corroboration of the drinking and drug problem at Rocky Flats comes from Caron Balkany and Wes McKinley's interviews with Jim Stone; from an Energy Department press release dated 26 October 1990; and from interviews with Jacque Brever and Ron Avery.
152. Mark Pitts, husband of Karen Pitts, gave the FBI an interview on 18 October 1989 describing how he had seen cardboard boxes full of wet filters from Building 771. Paul Voillequi, from Radiological Assessment Corporation, described to Caron Balkany how wet filters sag, and don't fit properly. This can cause radioactive contamination to escape around the sides of the filter, and out the exhaust stack into the environment.

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153. According to many experts, there is no safe level of exposure to ionizing radiation.
154. Physicians for Social Responsibility, *Dead Reckoning* (1992).
155. The Associated Press article on increased risks from low-level radiation is carried as "Report on radiation's harm spurs nuclear plant study," *The Rocky Mountain News*, 22 December 1989.
156. Karen Pitts's gave testimony at a public hearing for the Ahearne Committee in Denver on 17 July 1991 concerning her radiation badge:

*"I exited this plant on 4/17/91. I still have my TLD [radiation detection device worn on the outer clothing] from November of 1989. It has not been counted, but I did receive a count for that badge and for 1990. I would like to know where in hell those counts came from. I was not on Plant site, I did not turn in my badge, I still have it, I still have the TLD. I still have the picture, I still have it."*

157. Go to [www.IEER.org](http://www.IEER.org), the website sponsored by the Institute for Energy and Environmental Research, for an in-depth article on errors and problems in reporting radiation doses for nuclear workers. The admission of faulty data appears in *The Rocky Mountain News*, 18 March 1994, A. Partile, "Radiation exposures at weapons plants not monitored correctly, US now says."
158. The FBI mishandling of our FOIA request was typical of the FOIA responses from the other federal agencies. The difference with the FBI FOIA response is that we ultimately obtained the requested document—perhaps only because I told the FBI we already had a version of it—whereas with the Justice Department FOIA responses, we have received virtually none of the requested documentation. *The Denver Post* also had to wait more than three years before receiving a response to its FOIA request to the Energy Department about Rocky Flats. The newspaper got the last of the requested documents two days before EG&G's contract expired. EG&G was the company blamed for the waste which the newspaper was investigating. Mark Obmascik, "Flats withheld documents from Post FOIA request," *The Denver Post*, 2 July 1995.
159. The information about Judge Finesilver is found in Patricia Calhoun, "Grand Illusions, When it comes to Rocky Flats the Jury is still out," Patricia Calhoun, 16 November 1999, *Westword*.
160. CB Note: Ken Fimberg was perplexed that people were accusing him of covering things up at Rocky Flats. He felt he had done his best. *The Los Angeles Times* did a two part piece based on a seven hour interview with Fimberg.
- "How did I turn into the bad guy?" he wonders in that article. In 1993, after the Wolpe Report was published, Fimberg's mother wrote several angry letters to Congressman Wolpe and other members of Congress, berat-

ing them for “mistreating” her son. Ken Finberg had applied to be US Attorney, seeking to replace Mike Norton, a Republican who would be leaving because the Democrats had taken over the White House. According to his mother’s letter, Fimberg had been bitterly disappointed not to have even made the short list of recommendations for the judicial nomination commission. Ken Fimberg’s mother felt that was in no small part due to the Wolpe congressional investigation into the Justice Department’s handling of the Rocky Flats case. The letters from Fimberg’s mother are dated 10 February 1993 to the Honorable Patricia Schroeder, US House of Representatives.

Fimberg was a golden boy, according to Edith Holleman. The congressional subcommittee had been impressed with his Harvard education, his honors degrees, his skill in a courtroom. But I wondered what it must have been like to have been Fimberg that summer and fall of 1992. A star prosecutor who had spent three years of his life dedicated to one mammoth, highly publicized case. A case with massive historical implications. But one that was more than a little political, and which surely hadn’t turned out the way he’d intended.

Ken Fimberg, star prosecutor, must have been squirming on the wrong end of the congressional investigation. He was used to asking the questions, not answering them. He was used to being in control of criminal investigations, not being investigated. He was used to being the one demanding subpoenaed documents. He probably never dreamed he’d be under subpoena himself to produce even his most private memoranda and notes about a case that had suddenly made him look like a bad guy.

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