

The Ambushed Grand Jury is on the suggested reading lists of the League of Women Voters and Public Citizen; on the list of Must Read Books for the Venus Project; and on the reading lists for Texas Christian University, Brigham Young University Law List, ISBN.s for law study teaching, and on the recommended reading list of Perceval Press. It was featured in the Forum-Kerry-Edwards.com and in the international press. Here's a sample of some of the reviews:

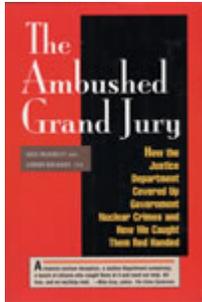
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Toxic waste, tainted justice

by Joshua Zaffos



Between 1952 and 1989, Rocky Flats Nuclear Weapons Plant — just 16 miles outside Denver — was the country's headquarters for weapons of mass destruction. Workers there produced more than 700 plutonium triggers for nuclear bombs in the Cold War arsenal.

But in 1989, following allegations of radioactive groundwater contamination and illegally burned and lost plutonium waste, the FBI conducted its first-ever raid of a federal facility. That raid shut down the weapons factory and initiated a "special grand jury" proceeding to determine the culpability of the U.S. Department of Energy and its defense contractor, Rockwell ([HCN, 3/30/98](#)).

What happened next depends on who is telling the story. After interviewing FBI operatives, Rocky Flats workers and scientists for almost three years, Justice Department prosecutors forced a plea bargain, citing a lack of evidence. That plea bargain eventually opened the door to Rocky Flats' new identity as a 6,000-acre wildlife refuge and recreation area. The refuge will open as soon as a contractor finishes demolishing buildings and planting native grass.

The government also fined Rockwell \$18.5 million, but said there were no off-site hazards from operations at the weapons plant, and it dropped fraud charges against Energy bigwigs and Rockwell execs.

But, according to a new book, the 23 Colorado citizens on the grand jury must have attended a different hearing: Whistleblowers confirmed illegal plutonium burning and a series of other safety lapses, and experts reaffirmed extensive contamination inside and outside the plant. *The Ambushed Grand Jury* reaches the verdict that the Justice Department's conclusions reflect a calculated surrender.

Authors Wes McKinley, the grand jury foreman, and Caron Balkany, a pro bono lawyer, show how Justice and Energy officials worked together to avoid government blame and exonerate Rockwell — and ensure the company could receive future federal contracts. *The Ambushed Grand Jury* presents this untold case of Rocky Flats and challenges readers to press for environmental justice for the millions of downwind and downstream metro Denver families at risk of toxic poisoning. For more information, visit www.ambushedgrandjury.com.

The Ambushed Grand Jury: How the Justice Department Covered Up Government Nuclear Crimes and How We Caught Them Red Handed

By Wes McKinley and Caron Balkany, Esq.

279 pages, softcover: \$19.95.

The Apex Press, 2004.

Voices of the Earth, Volume 5, 2004

The Ambushed Grand Jury
Wes McKinley and Caron Balkany
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"I am an FBI agent. My superiors have ordered me to lie about a criminal investigation I headed in 1989. We were investigating the U.S. Department of Energy, but the U.S. Justice Department covered up the truth."

So begins an Open Letter to the U.S. Congress from FBI Agent Joe Lipsky inside the cover of *The Ambushed Grand Jury: How the Justice Department Covered Up Government Nuclear Crimes And How We Caught Them Red Handed*.

This important book asks the readers to be a "Citizens' Grand Jury" to consider "how the U.S. Government and its defense contractors covered up dangerous environmental crimes at Rocky Flats Nuclear Weapons Plant, suppressed the indictments demanded by a federal grand jury, and threatened those jurors with jail if they spoke out." The authors also ask readers to contact their members of Congress to urge an investigation of those matters.

The Ambushed Grand Jury opens with a description of the events of June 6, 1989, from the viewpoint of FBI agent Lipsky, who led the raid on the Rocky Flats nuclear weapons plant, near Denver, Colorado. For the previous two years, Lipsky had been investigating allegations that the Department of Energy (DOE) and Rockwell International, the operating contractor, had contaminated workers, illegally released plutonium and other toxic materials into the air and streams, and lied about their actions, among other things. The final, key illegal act was infrared photography that proved that plutonium was being incinerated at night when the incinerator was shut down for safety violations.

Lipsky obtained a search warrant based on his 116-page affidavit describing ongoing environmental crimes. Rocky Flats officials were told that FBI agents were coming to brief them about a potential terrorist threat from EarthFirst. Once inside the plant with the warrant, FBI officials announced that they and Environmental Protection Agency personnel were raiding the plant, confiscating documents and trying to interview employees.

Most employees would not cooperate with the FBI, but Jacque Brever, a plutonium worker, became a whistleblower, who testified to the illegal incineration in December 1988. But when an FBI agent approached her in the Rocky Flats cafeteria, other plant workers began to harass her, so much so that she began to fear for her life. On September 14, 1989, while working at the Plant, Brever was contaminated with plutonium. One of the other workers told her, "Well, that's what you get for making waves." Brever continued to work at Rocky Flats until the Grand Jury was ended, when she resigned from Rocky Flats and went into hiding for almost a decade.

On August 1, 1989, 23 people were sworn in as the federal Special Grand Jury to investigate the alleged crimes at Rocky Flats and to decide whether to return indictments and what would be in their written report. Wes McKinley, a rancher from Walsh, about five hours from Denver, became the foreman of the Grand Jury, spending about a week a month in Denver. He and other grand jurors heard the testimony from Jacque Brever, and Allen Divers, the infrared analyst about the illegal incinerator burn, and about 180 other witnesses.

But on November 30, 1989, the Denver Post ran a story saying that the illegal incinerator burn had not occurred. FBI agent Lipsky, Jacque Brever, and Wes McKinley were all surprised that apparently secret Grand Jury testimony was leaked. Not only was the leak illegal, but the information was not true, though only Wes McKinley knew it at the time. Thus, from an early stage of the Grand Jury investigation, the U.S. Attorney had apparently decided that he wouldn't pursue a main allegation.

On March 24, 1992, the Special Grand Jury was disbanded and two days later U.S. Attorney Mike Norton announced a plea bargain in which Rockwell was fined \$18.5 million. Mr. Norton also

announced that he knew of "no evidence of any physiologic or environmental damage at all from the operations of the facility." Thus, no individuals from DOE or Rockwell were charged with crimes.

That result was contrary to what the Special Grand Jury had said in its February 18, 1992 draft report, which it had given to U.S. District Court Judge Sherman Finesilver. However, the judge ordered the Special Grand Jury report to be sealed and not released to the public. A local newspaper later released some of the Grand Jury Report, which asked for DOE and Rockwell officials to be indicted for environmental crimes. On October 16, 1992, Judge Finesilver asked the Justice Department to investigate whether one of the 23 Grand Jurors had violated the secrecy rule in releasing the report.

On November 19, 1992, Wes McKinley held a press conference in Denver to release a letter to President-elect Clinton signed by 13 of the Grand Jurors, asking for an investigation of the judge and Justice Department prosecutors mishandling of the environmental crimes at Rocky Flats.

The bulk of *The Ambushed Grand Jury* chronicles the efforts of Wes McKinley and Caron Balkany, a Santa Fe lawyer, to tell the story of the Special Grand Jury without violating the Grand Jury secrecy rule and being thrown in jail. A major motivating factor for Wes McKinley was that Rocky Flats is being turned into a wildlife refuge, which would require less cleanup than if it were to be released for residential or commercial development. McKinley said, "They don't even know how contaminated Rocky Flats is because the Justice Department covered up most of the evidence."

Among the evidence that they gathered was the 1992 congressional investigation by the House Science Subcommittee on Investigations and Oversight, chaired by Howard Wolpe, Democrat from Michigan. FBI Agent Lipsky testified to the subcommittee that there was plenty of evidence of the illegal plutonium burning and that lead prosecutor Ken Fimberg had wanted to indict some high-level officials but Justice Department officials in Washington, DC would not do so. One of those high officials was Attorney General Richard Thornburgh, who owned Rockwell stock. U.S. Attorney Mike Norton originally refused to testify to the subcommittee, but he ultimately did and contradicted Agent Lipsky's testimony. He even testified that Lipsky agreed with the plea bargain, something Lipsky denied. On January 4, 1993, the Wolpe report was published, including a finding that the Justice Department "bargained away the truth" about what really happened at Rocky Flats. The Justice Department said that the report was unfair and inaccurate and three days later Jon Lipsky was transferred out of the Denver FBI office.

After years of efforts, Attorney Balkany was able to talk with prosecutor Fimberg in the Netherlands, U.S. Attorney Norton, Jacque Brever, FBI agent Lipsky, and others. The fact that Fimberg and Norton had lied to Congress and to the public was further confirmed when Balkany finally talked with Allen Divers, the expert infrared analyst who determined that the nighttime photographs had confirmed that the illegal burning occurred. The prosecutors said that they had found that there was no evidence of such burning because Jacque Brever and other eyewitnesses were "unreliable" and that the infrared expert changed his opinion before the grand jury. On the contrary, Mr. Divers said that he had not changed his testimony, and in 2001, he still believed that the illegal burning had occurred.

Further information is found in the written journal Wes McKinley kept during the Grand Jury investigation, excerpts of which are included in the book. The journals reveal that on November 12, 1991, the attorneys told the grand jury that their work was done, even though there had been no indictments, no report, or other action. Instead, over the next three months, the jurors wrote the Special Grand Jury Report. On March 24, 1992, the U.S. Attorney had even taken the grand jury out of their designated room and into another room, where he first tried to dissuade the jury from giving their report to the judge, telling them that he would not sign their report. Then, when the grand jury said it was going to submit its report, tried to get them to indict Rockwell International as a corporation, rather than individuals from DOE and Rockwell. But the grand jury did not vote for the Rockwell-only indictment.

One question that has caused some people to doubt the Grand Jury's story is: Why would the U.S. Justice Department conduct a raid on Rocky Flats, convene a grand jury to investigate

serious crimes, and then cover it up? Attorney Balkany speculates that a major reason was that other investigations and public information were leading up to major litigation against Rocky Flats, DOE and Rockwell, so by conducting the criminal investigation, the Justice Department preempted any other action, could control witnesses, documents, and investigations, and, they presumably thought, could also control the grand jury, since usually such juries rubber stamp the prosecutors. As it turned out, the Justice Department could not control the majority of the Special Grand Jury, but it could keep their report and the mouths of the jurors sealed.

Although McKinley, Brever, and Balkany are all heroes of this continuing effort to expose the truth and clean up Rocky Flats, their work has been supported by citizen activists who campaigned for years to close Rocky Flats, to clean up the site, and to publicize the work of the Special Grand Jury. While they want a congressional investigation of the Justice Department's continuing cover-up of the Special Grand Jury, the authors also want to support present and future work of those citizen groups who want to bring accountability regarding the U.S. nuclear weapons program. Thus, proceeds of the book are going to citizen groups.

The Ambushed Grand Jury tells a compelling story, but work is still needed so that the story does not end with a mostly successful cover-up and an unsafe Rocky Flats Wildlife Refuge - and the likelihood that the Justice Department behaves similarly in the future. Read the book and join the continuing campaign at www.Ambushedgrandjury.com.

— Don Hancock

NEW MEXICO

M A G A Z I N E

This nonfiction detective story presents irrefutable evidence that the federal government and its defense contractors covered up dangerous environmental crimes at Rocky Flats Nuclear Weapons Plant, 16 miles upwind from Denver. The book begins with a 1989 FBI raid on the plant, where most of the country's plutonium bomb cores were made during the Cold War. There was massive contamination present, and it was obvious that numerous laws had been broken.

What followed was a three-year grand jury investigation of alleged government and contractor crimes at Rocky Flats. Included in the book are the firsthand stories of the FBI agent in charge of the raid; the whistleblower heroine, Jacque Brewer, who revealed to the FBI that contaminated trash was being burned secretly, illegally, in an incinerator at night, sometimes even at midnight, so that public would be none the wiser; Wes McKinley, the area cowboy grand jury foreman, who was miffed that the justice department covered up the entire fiasco; and their sharp and tireless pro bono Santa Fe lawyer, Caron Balkany. What unfolds is the plot of a feature film, and it certainly makes for interesting reading.





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(From June 15, 2004 Issue)

CALAMITY HOWLER/A.V. Krebs

Nukes and Government Lies

Outrage is admittedly the most common emotion one feels after reading the 280-page *The Ambushed Grand Jury* [Apex Press].

However, one also experiences practically every other human emotion -- frustration, anger, sadness, joy, empathy and admiration of the human spirit -- as authors Caron Balkany and Colorado cowboy Wes McKinley reveal how the US Department of Justice covered up government nuclear crimes at Colorado's Rocky Flats Nuclear Weapons plant and how a band of persevering individuals courageously caught the government red handed.

Their riveting story is not just about Balkany, an anti-nuclear activist and volunteer lawyer, and McKinley, who served three years as the foreman of a special grand jury convened in 1989 to hear charges of nuclear crimes by the US government and its defense contractor, Rockwell International.

It is also about a courageous whistleblower and a former plutonium plant employee, Jacque Brever, and an FBI agent, Jon Lipsky, who saw years of hard work investigating environmental criminality undermined by his own superiors and the US government.

Throughout the book the reader is shown evidence of how the US government and its defense contractors covered up dangerous environmental wrongdoing at Rocky Flats, suppressed the indictments demanded by a federal grand jury and threatened those jurors with jail if they spoke out concerning their findings.

Rocky Flats, where the triggers for America's nuclear arsenal were made, lies only 16 miles upwind from Denver and has the reputation of being one of the most contaminated

nuclear facilities in the nation, although its production facilities have been closed since 1992.

Unwilling to accept being made victims, it was through McKinley's sense of justice and Balkany's initial investigative efforts that a Citizens' Grand Jury Investigation was launched and still is enlisting support of Citizen Grand Jurors to consider all the facts --

laid out meticulously in a 43-page appendix, 36 of which are textual footnotes -- and render their decision in the court of public opinion and before Congress.

The Ambushed Grand Jury, which details their citizens' investigation and additional information can be obtained at www.Ambushedgrandjury.com. The authors are donating their profits to nuclear watchdog and environmental groups around the country.

In the book, the Citizens' Grand Jury recounts how Lipsky, the FBI agent, after years of methodical preparation and investigation led a historic 1989 FBI raid on the Rocky Flats plant, the first time the bureau ever served a search warrant on the US government, only to see the US Justice Department sell out his case.

Later, Lipsky maintains, the Justice Department ordered him to lie about what had happened with the criminal investigation. Outraged, Special Agent Lipsky instead joined the citizens' investigation to help uncover the secrets of Rocky Flats.

It also tells the story of Brever, who blew the whistle on repeated safety violations and secret illegal midnight plutonium burning at Rocky Flats, after the facility had been ordered to shut down. Subsequently, in 1989, she believes someone tried to kill her by intentionally contaminating her with deadly radioactivity to stop her from testifying before the Special Federal Grand Jury. She testified anyway.

Despite her expert testimony, the government sabotaged her two days of testimony by claiming she was not "a very reliable source."

Distraught and fearful of the continuing assaults on her and her young daughter, she fled Colorado and disappeared for almost 10 years, yet in failing health and still fearful of the dangers that almost killed her she eventually came out of hiding to join the Citizens' Grand Jury Investigation.

Today she is undergoing treatment for thyroid cancer and has started United to Keep Rocky Flats Closed, a Colorado-based informational program dedicated to stopping government efforts to convert the highly-contaminated 6,550-acre Rocky Flats reservation into a national wildlife refuge with horseback riding, hiking and children's school trips.

The other key hero in this tale of how the US government has held the health of an unsuspecting public hostage in the name of corporate greed, at the same time bilking the nation's taxpayers of millions of dollars and attempting to discredit those patriots who sought to expose their corrupt practices, is Wes McKinley.

Foreman of the 1989-1992 federal grand jury that sought to investigate the insidious relationship between the US Department of Energy and Rockwell International, he saw the US Department of Justice ambush his 23-member panel and seal their grand jury report detailing the evidence of alleged nuclear crimes and lethal contamination in addition to threatening those same jurors with prison if they talked about it.

He also witnessed the Justice Department lies to the grand jury, Congress and the public about what the Energy Department-Rockwell alliance had really been doing at Rocky Flats.

Described as "as patriotic and law abiding as they come," who "never even had a traffic ticket" McKinley, despite being under investigation by the FBI since 1992, has sought to try and find ways to warn the Congress and the public about the dangers he and his fellow jurors uncovered in their three years of hearing Rocky Flats testimony.

He has twice run unsuccessfully for Congress, hoping to use congressional immunity to reveal what truly happened with the grand jury. He is running again in 2004. Otherwise, grand jury secrecy rules prevent him from talking about the evidence the grand jury reviewed. Violation of Federal Criminal Rule 6(e) could lead to a prison sentence, or an indefinite prison sentence, based on the mood of the presiding judge.

In a conversation with his attorney, Caron Balkany, the Colorado native explained his motivation:

"This isn't about them and it isn't about me. This is about how the government works. It's no use going half way and showing how you can't trust the government to do nuclear stuff because they lie, if you don't go the rest of the way and show that you can't trust the government to enforce the laws, either, because they lie. It's the same issue, it's the same problem. If people aren't held accountable for what they do, the system won't work.

"And I have to be accountable for what I do too," McKinley stressed. "Or what I don't do. Maybe this is just a little bit of accountability, but it's better than nothing."

Author Balkany adds: "The Citizens' Grand Jury Investigation isn't just about Rocky Flats. It isn't just about a Justice Department cover-up. The government has plans to turn toxic and hazardous waste sites throughout the entire country into recreation areas. They say they'll clean them up. But after you hear the evidence of the cover-up at Rocky Flats, you decide whether you can believe what the government says about how it cleans up its own toxic mess."

Clearly, as Arjun Makhijani, president of the Institute for Energy and Environmental Research, points out in his "Afterword":

"This book, with its real cowboy protagonist -- a cowboy who knows mathematics -- and its courageous FBI agent and [its] Rocky Flats whistleblower, is far more than a cautionary tale. It is a true story of public empowerment, based on solid research and told

with style and vigor. If we pay no heed to its message, we risk sliding down a steep slope into the nuclear abyss. But should we be awake enough to attend to it, we will surely be moved to put people back in the saddle and nuclear weapons where they belong in the dust bin of history."

A.V. Krebs operates the Corporate Agribusiness Research Project and publishes a free email newsletter, The Agribusiness Examiner; email avkrebs@earthlink.net; www.ea1.com/CARP/