

United States District Court
EASTERN DISTRICT OF WASHINGTON

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEC 19 2006

UNITED STATES OF AMERICA

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

V.

CRIMINAL COMPLAINT

ELLREESE N. DANIELS

CASE NUMBER: MJ-06-308

(Name & Address of Defendant)

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief.

COUNT ONE

On or about July 10, 2001, in the Okanogan-Wenatchee National Forest, in the Eastern District of Washington, Defendant ELLREESE N. DANIELS did commit a lawful act or a series of lawful acts, specifically, supervising firefighters who were working to suppress a wildfire in the Chewuch River Canyon, which was referred to as the Thirtymile Fire, in a manner that was grossly negligent, meaning in a manner that was in wanton and reckless disregard for human life, with the Defendant knowing of circumstances that reasonably would cause the Defendant to foresee that the Defendant's course of conduct in the supervision of the firefighters might place the lives of firefighters in danger, which was the proximate cause of the death of Tom Craven, a firefighter who was employed by the Forest Service, U.S. Department of Agriculture, while Tom Craven was engaged in the performance of his official duties; all in violation of Title 18, United States Code, Sections 1112 and 1114.

Continued on the attached sheet incorporated herein by this reference. Yes No
I further state that I am a Special Agent and that this complaint is based on the following facts:

J. R. Parker
Signature of Complainant J. R. Parker
Special Agent, OIG, U.S.D.A.

Sworn to before me, and subscribed in my presence
December 19, 2006
Date
Cynthia Imbrogno
United States Magistrate Judge
Name and Title of Judicial Officer

at Spokane, Washington
City and State
[Signature]
Signature of Judicial Officer
P61215RC.THB.wpd

COUNT TWO

On or about July 10, 2001, in the Okanogan-Wenatchee National Forest, in the Eastern District of Washington, Defendant ELLREESE N. DANIELS did commit a lawful act or a series of lawful acts, specifically, supervising firefighters who were working to suppress a wildfire in the Chewuch River Canyon, which was referred to as the Thirtymile Fire, in a manner that was grossly negligent, meaning in a manner that was in wanton and reckless disregard for human life, with the Defendant knowing of circumstances that reasonably would cause the Defendant to foresee that the Defendant's course of conduct in the supervision of the firefighters might place the lives of firefighters in danger, which was the proximate cause of the death of Karen Fitzpatrick, a firefighter who was employed by the Forest Service, U.S. Department of Agriculture, while Karen Fitzpatrick was engaged in the performance of her official duties; all in violation of Title 18, United States Code, Sections 1112 and 1114.

COUNT THREE

On or about July 10, 2001, in the Okanogan-Wenatchee National Forest, in the Eastern District of Washington, Defendant ELLREESE N. DANIELS did commit a lawful act or a series of lawful acts, specifically, supervising firefighters who were working to suppress a wildfire in the Chewuch River Canyon, which was referred to as the Thirtymile Fire, in a manner that was grossly negligent,

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meaning in a manner that was in wanton and reckless disregard for human life, with the Defendant knowing of circumstances that reasonably would cause the Defendant to foresee that the Defendant's course of conduct in the supervision of the firefighters might place the lives of firefighters in danger, which was the proximate cause of the death of Jessica Johnson, a firefighter who was employed by the Forest Service, U.S. Department of Agriculture, while Jessica Johnson was engaged in the performance of her official duties; all in violation of Title 18, United States Code, Sections 1112 and 1114.

COUNT FOUR

On or about July 10, 2001, in the Okanogan-Wenatchee National Forest, in the Eastern District of Washington, Defendant ELLREESE N. DANIELS did commit a lawful act or a series of lawful acts, specifically, supervising firefighters who were working to suppress a wildfire in the Chewuch River Canyon, which was referred to as the Thirtymile Fire, in a manner that was grossly negligent, meaning in a manner that was in wanton and reckless disregard for human life, with the Defendant knowing of circumstances that reasonably would cause the Defendant to foresee that the Defendant's course of conduct in the supervision of the firefighters might place the lives of firefighters in danger, which was the proximate cause of the death of Devin Weaver, a firefighter who was employed by the Forest Service, U.S. Department of Agriculture, while Devin Weaver was

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engaged in the performance of his official duties; all in violation of Title 18, United States Code, Sections 1112 and 1114.

COUNT FIVE

On or about July 12, 2001, in the Eastern District of Washington, in a matter within the jurisdiction of the Forest Service, U.S. Department of Agriculture, Defendant ELLREESE N. DANIELS did knowingly and intentionally make a false and fictitious material statement and representation concerning his conduct while supervising firefighters on the Thirtymile Fire; specifically, during an interview with a member of the Forest Service Safety and Accident Investigation Team and a representative of the Occupational Safety and Health Administration, while describing the events following the entrapment of a portion of the Northwest Regular # 6 firefighting crew and through the deployment of fire shelters by those crew members, the Defendant stated that he told a female firefighter to get two civilians into her fire shelter and to keep them in her shelter; when in truth and in fact the Defendant knew during the interview that he had not given any instruction to the female firefighter to get the two civilians into her fire shelter; all in violation of Title 18, United States Code, Section 1001.

COUNT SIX

On or about July 12, 2001, in the Eastern District of Washington, in a

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matter within the jurisdiction of the Forest Service, U.S. Department of Agriculture, and the Occupational Safety and Health Administration, U.S. Department of Labor, Defendant ELLREESE N. DANIELS did knowingly and intentionally make a false and fictitious material statement and representation concerning his conduct while supervising firefighters on the Thirtymile Fire; specifically, during an interview with a member of the Forest Service Safety and Accident Investigation Team, in response to a question about what communication took place between the Defendant and a small group of firefighters who were on a scree slope above a road at the site where the entrapped members of the Northwest Regular # 6 firefighting crew eventually deployed their fire shelters, the Defendant stated that he told the group at least three times to come down out of the rocks because that is not the place to be; when in truth and in fact the Defendant knew during the interview that he had not told the small group of firefighters to come down out of the rocks; all in violation of Title 18, United States Code, Section 1001.

COUNT SEVEN

On or about July 12, 2001, in the Eastern District of Washington, in a matter within the jurisdiction of the Forest Service, U.S. Department of Agriculture, and the Occupational Safety and Health Administration, U.S. Department of Labor, Defendant ELLREESE N. DANIELS did knowingly and

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intentionally make a false and fictitious material statement and representation concerning his conduct while supervising firefighters on the Thirtymile Fire; specifically, during an interview with a member of the Forest Service Safety and Accident Investigation Team, while discussing a small group of firefighters who were on a scree slope above a road at the site where the entrapped members of the Northwest Regular # 6 firefighting crew eventually deployed their fire shelters, and in response to a question about whether the Defendant had any idea why the small group of firefighters did not do as he asked to come down out of the rocks, the Defendant stated that he did not have any idea and that he wished that he could have made them listen; when in truth and in fact the Defendant knew during the interview that he had not told the small group of firefighters to come down out of the rocks; all in violation of Title 18, United States Code, Section 1001.

COUNT EIGHT

On or about August 9, 2001, in the Eastern District of Washington, in a matter within the jurisdiction of the Occupational Safety and Health Administration, U.S. Department of Labor, Defendant ELLREESE N. DANIELS did knowingly and intentionally make a false and fictitious material statement and representation concerning the conduct of Forest Service employees who were operating fire engines on the Thirtymile Fire, during an interview with a

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representative of the Occupational Safety and Health Administration; specifically, in response to a question as to whether the Defendant knew that two fire engines had arrived at the fire, the Defendant stated that neither of the two fire engines, which were designated as Engine 701 and Engine 704, stopped to talk to the Defendant or to the Crew Boss Trainee for the Northwest Regular # 6 firefighting crew when they arrived at the Thirtymile Fire on the afternoon of July 10, 2001; that the engines were "doing their own thing;" and that neither of the engines ever contacted the Defendant or the Crew Boss Trainee; when in truth and in fact the Defendant knew during the interview that the foreman of the larger of the two fire engines, Engine 701, had stopped, checked in with the Defendant, and confirmed with the Defendant that the engines would proceed up the Chewuch River Canyon to patrol for spot fires; all in violation of Title 18, United States Code, Section 1001.

COUNT NINE

Between on or about March 14, 2002, and on or about March 28, 2002, in the Eastern District of Washington, in a matter within the jurisdiction of the Forest Service, U.S. Department of Agriculture, Defendant ELLREESE N. DANIELS did knowingly and intentionally make a false and fictitious material statement and representation on or about March 14, 2002, during an interview with members of the Forest Service Administrative Review Team that was

examining the conduct of Forest Service employees who worked on the Thirtymile Fire, and did knowingly and intentionally document that false and fictitious material statement and representation in a declaration that the Defendant signed on or about March 28, 2002; specifically, the Defendant stated that neither of the two fire engines, which were designated as Engine 701 and Engine 704, checked in with the Defendant when they arrived at the Thirtymile Fire on the afternoon of July 10, 2001; when in truth and in fact the Defendant knew during the interview that the foreman of the larger of the two fire engines, Engine 701, had stopped, checked in with the Defendant, and confirmed with the Defendant that the engines would proceed up the Chewuch River Canyon to patrol for spot fires; all in violation of Title 18, United States Code, Section 1001.

COUNT TEN

Between on or about March 14, 2002, and on or about March 28, 2002, in the Eastern District of Washington, in a matter within the jurisdiction of the Forest Service, U.S. Department of Agriculture, Defendant ELLREESE N. DANIELS did knowingly and intentionally make a false and fictitious material statement and representation on or about March 14, 2002, during an interview with members of the Forest Service Administrative Review Team that was examining the conduct of Forest Service employees who worked on the Thirtymile Fire, and did knowingly and intentionally document that false and

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fictional material statement and representation in a declaration that the Defendant signed on or about March 28, 2002; specifically, while describing the events from the time that a portion of the Northwest Regular # 6 firefighting crew re-engaged the wildfire through the deployment of fire shelters by the entrapped crew members, the Defendant stated that he told Tom Craven and the other firefighters who were with Tom Craven in a loud voice to come down from the scree slope to the road, but that the firefighters did not come down from the scree slope; when in truth and in fact the Defendant knew during the interview that he had not told the small group of firefighters to come down from the scree slope to the road; all in violation of Title 18, United States Code, Section 1001.

COUNT ELEVEN

Between on or about March 14, 2002, and on or about March 28, 2002, in the Eastern District of Washington, in a matter within the jurisdiction of the Forest Service, U.S. Department of Agriculture, Defendant ELLREESE N. DANIELS did knowingly and intentionally make a false and fictitious material statement and representation on or about March 14, 2002, during an interview with members of the Forest Service Administrative Review Team that was examining the conduct of Forest Service employees who worked on the Thirtymile Fire, and did knowingly and intentionally document that false and fictitious material statement and representation in a declaration that the Defendant

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signed on or about March 28, 2002; specifically, while describing the events from the time that a portion of the Northwest Regular # 6 firefighting crew re-engaged the wildfire through the deployment of fire shelters by the entrapped crew members, the Defendant stated that he told a female firefighter to get a female civilian and a male civilian into her fire shelter and to keep them in her shelter; when in truth and in fact the Defendant knew during the interview that he had not given any instruction to the female firefighter to get the two civilians into her fire shelter; all in violation of Title 18, United States Code, Section 1001.

re: Complaint for Ellreese N. Daniels

AFFIDAVIT

STATE OF WASHINGTON)
 :SS
County of Spokane)

John R. Parker, being first duly sworn on oath, deposes and states:

I am a Special Agent (SA) with the United States Department of Agriculture (USDA)-Office of Inspector General (OIG), assigned to the Seattle, Washington, sub-office. I have been employed with USDA-OIG as a Special Agent since March of 1990. Prior to joining USDA-OIG, I was a Special Agent with the United States Department of Energy, Richland, Washington, from December 1989 until March 1990. Prior to that, I was a United States Postal Inspector from September 1984 until December 1989. I was assigned to the Seattle Postal Inspection Service for five years and the New York Postal Inspection Service for three months. I completed Postal Inspector Academy training in Potomac, Maryland, a thirteen (13)-week basic law enforcement academy for federal law enforcement officers. As a Special Agent with USDA-OIG, I am authorized to conduct investigations, make arrests, execute warrants, carry firearms, and

perform enforcement and other duties as imposed by the Secretary of Agriculture or authorized by the Inspector General Act of 1978 (Public Law 95-452), the Agriculture and Food Act of 1981 (Public Law 97-98), or other law or department regulation.

In addition to investigating all criminal acts of violations of USDA program requirements and related criminal violations, I am also authorized to conduct wildland fire fatality investigations as authorized by Public Law 107-203. This law enacted in July of 2002, and subsequently codified in 7 U.S.C. § 2270b, Department of Agriculture Inspector General Investigation of Forest Service Firefighter Deaths, states that:

In the case of each fatality of an officer or employee of the Forest Service that occurs due to wildfire entrapment or burnover, the Inspector General of the Department of Agriculture shall conduct an investigation of the fatality .

..

After this law was enacted, USDA-OIG formed a Wildland Fire Investigation Team (WFIT) comprised of various senior special agents throughout the United States. Since its inception, I have completed the U.S. Forest Service's Wildland Fire Cause and Origin Training at the Federal Law Enforcement Center (FLETC), Glynco, Georgia; the Forest Service/Bureau of Land Management

Serious Accident Investigation Training, Phoenix, Arizona; the Forest Service Basic Wildland Firefighter Academy Training, Boise, Idaho; Forest Service Wildland Firefighter Crew Boss Training, Boise, Idaho; and Forest Service Annual Fire Refresher Training. Additionally, I have completed numerous Incident Command System (ICS) online training modules.

I am currently involved in the investigation of the deaths of four wildland firefighters who were killed as a result of a burnover on the Thirtymile Fire on July 10, 2001. The facts that I have set forth in this affidavit are based upon information that I have acquired from my personal participation in the investigation. I obtained access to voluminous materials from the Forest Service, U.S. Department of Agriculture, and from the Occupational Safety and Health Administration, U.S. Department of Labor. In the course of the investigation, which I have pursued in concert with the U.S. Attorney's Office in the Eastern District of Washington, I have conducted numerous interviews.

This affidavit is being produced for the limited purpose of establishing probable cause to support the issuance of a Criminal Complaint against Ellreese N. Daniels. Therefore, I have not included in this affidavit each and every fact known to me regarding this investigation.

Overview of the Thirtymile Fire

In early July of 2001, a year of severe drought, numerous wildfires were burning in Washington. On the afternoon of July 10, 2001, four Forest Service firefighters died while participating in an operation to suppress a wildfire in the Chewuch River drainage within the Okanogan-Wenatchee National Forest. The drainage was a box canyon, which contained a single road in to a campground near the north end of the canyon. There were no houses, businesses, or Forest Service buildings in the drainage.

The wildfire, which was designated the Thirtymile Fire, had started the previous day as a result of an abandoned camp fire. The fire burned generally northeast, up the canyon, from the point of origin. During the early morning hours of July 10th, the fire was only about five acres and was burning slowly in a riparian area adjacent to the river. According to the Okanogan National Forest Dispatch Log, the Entiat Interagency Hotshot crew arrived at the fire at approximately 1:30 a.m. The Hotshot crew worked to build a line around the fire. The vegetation was dense, making the work to cut a control line arduous.

The 21-member Northwest Regular # 6 Type 2 crew (NWR # 6) relieved the Hotshots about 9:30 a.m. NWR # 6 consisted of a Crew Boss Trainer, who was

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Ellreese N. Daniels; a Crew Boss Trainee, who was Pete Kampen; and three squads of firefighters. Each squad had a squad boss. Approximately half of the crew members were rookies.

Upon arriving at the fire, Mr. Daniels, the Crew Boss Trainer, and Mr. Kampen, the Crew Boss Trainee, obtained a briefing and a walk-through with the Hotshot Superintendent, who was Marshall Brown, and the Assistant Superintendent, who was Kyle Cannon. Mr. Kampen then briefed the crew. NWR # 6 actually starting working on the fire at about 11:00 a.m. The Hotshots went down the road to a camping area to eat and get some sleep.

The day was hot and the relative humidity was dropping. The active fire was on the east side of the Chewuch River, which itself was east of the road. Mr. Daniels and Mr. Kampen had NWR # 6 cross the river and set up two pumps to support firefighting efforts. The crew was largely unsuccessful, apparently as a result of inexperience, in operating two water pumps. The vegetation was dense, making hand-line construction slow and hard. Several hand tools broke. The intensity of the fire increased, single trees began to torch, and extensive spotting occurred. The spots started to jump the control line. The fire started to move out of the riparian area, into drier material, toward the east wall of the canyon.

According to the Okanogan National Forest Dispatch Log (Dispatch Log), Mr. Daniels asked at 12:08 p.m. for Helicopter 13N to launch for the purpose of dropping buckets of water on the fire. The helicopter was delayed until about 2:30 p.m. because of an issue about available dip sites. The Dispatch Log reflects that at 12:30 p.m., Mr. Daniels asked for one or two additional crews. At 12:40 p.m., the Dispatch Center arranged for an Air Attack aircraft, a single engine plane with a pilot and a passenger who would coordinate air resources to include air tankers and helicopters. Forest Service employee Gabe Jasso was the passenger/coordinator in Air Attack. The Dispatch Log reflects that at 12:46 p.m., Mr. Daniels stated that they did not need an air tanker at this time. A few minutes later, the Dispatch Log shows that Mr. Daniels decided to send a runner to wake up the Hotshots and to ask them to return to the fire.

According to the Dispatch Log, Air Attack reported at 1:38 p.m. that the fire was getting active and had grown in the last half hour. Five minutes later, through Air Attack, Mr. Daniels repeated his request for two more crews and also asked for a small air tanker.

Mr. Daniels and Mr. Kampen disengaged the fire at around 2:00 p.m. and withdrew their crew across the river to the "lunch spot," which was along the road

just north of the point of origin. They indicated to the crew that they had lost the fire and that it would be an "air show." Crew members ate, and some slept while others worked on their tools. The first air tanker drop was unsuccessful in slowing the fire's advance up the east slope.

According to the Dispatch Log, at 2:27 p.m., Gabe Jasso in Air Attack arranged for two fire engines to travel to the Thirtymile Fire. At about 2:45 p.m., Helicopter 13N arrived with a 135-gallon bucket. I interviewed the helicopter pilot, Paul Walters. He told me that he had expected to work in coordination with NWR # 6, but the crew, to his surprise, was further up canyon. Mr. Walters could not see the crew at the lunch spot, let alone up canyon beyond the first tree line as a result of smoke. After consulting with Mr. Daniels and Air Attack, Mr. Walters made bucket drops along the east flank of the fire, first on the slope (ineffective) and then south of the lunch spot along the road. Helicopter 13N could not fly further into the canyon because Mr. Walters could not see as a result of the smoke. The helicopter was a non-factor in the events of the afternoon.

Air Attack left to refuel at 2:54 p.m. Lead 65, piloted by Gregory House, replaced Air Attack as the aerial platform for the fire. Mr. House, who was a former air tanker pilot, had as his primary responsibility, guiding air tankers on

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their runs. Lead 65 made contact with Mr. Daniels and remained over the fire until Air Attack returned at approximately 4:24 p.m.

According to the Dispatch Log, Engine 701 arrived at the fire at 3:24 p.m. and Engine 704 arrived at 3:27 p.m. Harry Dunn, the foreman of Engine 701, which was the larger of the two engines, stopped the engine at the lunch spot and checked in with Mr. Daniels. As the Incident Commander, Mr. Daniels had responsibility for managing the use of the engines. Mr. Dunn told Mr. Daniels that he would take the engines up canyon to patrol the road for spot fires in an effort to keep the fire on the east side of the road. At this point, the fire was burning up the east slope of the canyon and along the river.

Mr. Dunn, with Engine 701, drove a couple miles up (north) the canyon road and turned around. On the way back down the canyon (south), Engine 701 encountered a spot fire on the east side of the road (but west of the river). Mr. Dunn and his crew sprayed the spot fire, which was about 100 feet in diameter and had four-foot flame lengths. He then called for a hand crew to come up canyon to dig a line around a spot that his engine had hosed down. Mr. Daniels and Mr. Kampen, without scouting the fire, without notifying the aerial platform, and without posting a lookout, took two of the three squads of NWR # 6 up canyon.

Members of the squads saw that they passed a couple spot fires as they drove up canyon. In fact, Engine 704 was putting out one of those spot fires on the west side of the road. One of the squads stopped to ask Engine 704 if it needed assistance. Engine 704 declined the offer, and the squad continued up canyon to Engine 701. I interviewed Mr. Dunn. He told me that Mr. Daniels informed him, upon arriving at Engine 701's location, that there were a couple of spot fires below them. At 4:34 p.m., the fire burned across the road, north of the lunch spot and south of the two squads. Engine 701 had just left the spot fire to get more water and was able to drive south of the fire. Mr. Kampen had left the spot fire earlier to pick up and transport the third squad up the canyon. He and the third squad, together with the Entiat Hotshot crew, were on the south side of the fire.

The wildfire trapped two squads of the relatively inexperienced fire crew and two hikers in the box canyon. Mr. Daniels had his 14-member team retreat north to a location on the road, parallel to the Chewuch River. The river was on the east and a scree slope was to the immediate west of the road. The two civilians, heading south from the campground, joined the fire crew at this location.

Mr. Daniels and the two squads were at the location for over a half an hour before the fire reached them. Mr. Daniels repeatedly told crew members to stay

calm and he expressed his belief that the fire would burn around them. His plan was to let the fire burn by to the north, up canyon, and then to drive south on the road and out of the canyon. He took no steps to prepare the site or the crew for a possible deployment of individual fire shelters. Even though an entrapment is viewed by firefighting agencies as a highly unusual and undesirable development, Mr. Daniels did not notify Dispatch of the entrapment. Instead, he spent his time in radio communication with Gabe Jasso in Air Attack monitoring the progress of the fire. Heavy smoke inhibited Air Attack's ability to see the fire. Members of the crew did not remain together on the road. Instead, Squad Leader Tom Taylor climbed up the scree slope to get a better look at the progress of the fire. Squad Boss Tom Craven and several firefighters walked up the scree slope a short distance and sat on some large rocks.

At 5:24 p.m., the fire jumped the river with great intensity and burned over the two squads of NWR # 6 and the two civilians. The crew members deployed their fire shelters, eight on the road and six on the uneven scree slope. A courageous rookie firefighter, Rebecca Welch, on the road placed herself at personal risk by having the two civilians share her shelter. All four fatalities occurred on the slope. Squad Boss Tom Craven and rookie firefighters Karen

Fitzpatrick, Jessica Johnson, and Devin Weaver inhaled superheated air that had entered their shelters, apparently through openings on the uneven ground. They were asphyxiated. Firefighter Jason Emhoff, who also deployed on the scree slope, sustained serious burns.

I have attached to this affidavit as Attachment A an aerial view of the Chewuch River drainage that shows the locations of the fire's point of origin; a point where some crew members of NWR # 6 crossed the river when initially fighting the fire on the east side of the river; the point where the fire crossed the road, entrapping two squads of NWR # 6; the point where Engine 701 and the two squads had been suppressing a spot fire immediately before the entrapment; and the deployment site. I have attached to this affidavit as Attachments B, C, and D diagrams that reflect the progression of the fire, both up the east slope of the canyon wall and up the floor of the canyon, between approximately 3:20 p.m., just before the two engines arrived at the fire, and approximately 5:30 p.m., just after the entrapped crew members deployed their fire shelters. I obtained these documents from the Safety & Accident Investigation Team's report.

The Investigations

Both the Occupational Safety and Health Administration (OSHA) and the Forest Service conducted investigations into the events that resulted in the deaths of the firefighters. The initial Forest Service investigation, known as the Safety & Accident Investigation, involved representatives from the Forest Service and other agencies that have experience in firefighting operations such as the Bureau of Land Management, the National Weather Service, and the national Interagency Fire Center. OSHA and the Forest Service did a joint, videotaped interview with Mr. Daniels on July 12, 2001. A different member of the Safety & Accident Investigation Team did a brief, supplemental interview with Mr. Daniels on July 12, 2001. OSHA did a follow-up, audio taped interview on August 9, 2001.

After the Safety & Accident Investigation Team released a report that was very critical of the performance of Forest Service managers and supervisors on the Thirtymile Fire, to include that Mr. Daniels and others displayed a serious lack of situational awareness, and concluded that the deaths should not have occurred, the Forest Service commissioned an Administrative Review Team to examine the performance of the Forest Service senior personnel on the Thirtymile Fire and to determine whether administrative discipline would be appropriate.

The Administrative Review Team interviewed Mr. Daniels on March 14, 2002, and he signed a written declaration on March 28, 2002. After discipline was proposed, Mr. Daniels met with the Oral Reply Team on August 27, 2002. The Forest Service removed Daniels from the fire program. He now works at the supply cache.

Involuntary Manslaughter

OSHA found that the Forest Service supervisors had violated all ten of the Standard Fire Orders in the National Wildfire Coordinating Group Fireline Handbook and cited the Forest Service for several “willful” violations of the Occupational Safety and Health Act. The Forest Service Safety & Accident Investigation Team concluded that the fatalities were preventable and that a combination of human errors and conditions in the canyon caused the loss of life. Specifically, the Forest Service identified the following significant causes that led to the entrapment of the crew and the resulting deaths of four crew members:

1. Although the region had experienced an extended drought; although air temperature was unusually high and relative humidity was unusually low; and although a portion of the canyon contained a complex mixture of fuels

that had a historically low moisture content; the supervisors consistently underestimated the potential for extreme fire behavior.

2. Given the potential for extreme fire behavior, the supervisors did not have adequate ground and air tanker resources available to respond promptly to the change in fire behavior.

3. Given the limited available resources to respond to the change in fire behavior and the absence of a second escape route from the canyon, the supervisors failed to withdraw the fire crew from the canyon when the initial attack failed and the fire began to grow.

4. Terrain blocked the view of the crew boss, which delayed his realization that the fire had grown in size and intensity before his crew was trapped.

5. District fire management personnel did not take command of the incident when the size and the complexity of the fire increased.

6. Inadequate communication among supervisors in assessing and responding to the change in fire behavior.

7. The fire crew and supervisors, both those in direct command of the crew and those managing the fire suppression in the area, were suffering from sleep deprivation and fatigue, with work/rest cycles being disregarded,

which impaired their vigilance and their decision-making in response to changes in conditions.

8. The fire crew was not a cohesive unit because it contained two elements that had not trained together and because some of the crew members were inexperienced.

9. The dense forest and steep east wall of the canyon exacerbated fire-induced winds and caused the fire on the canyon floor to intensify quickly as it approached the crew's location.

10. Although the crew boss retreated to a relatively good location given his limited options in a narrow canyon, he failed to utilize the available time to ensure that the crew properly deployed their personal fire shelters. As a result, the crew wasted time watching the fire and only deployed their shelters as the fire was about to burn over them.

11. The crew boss failed to utilize the available time and to maintain control over the crew to ensure that the crew members deployed their personal fire shelters at locations on the road that maximized survivability.

12. All four fatalities occurred on the rocky slope above the road, where the heat was more intense on the upward slope as opposed to on the flat road

and where the uneven ground made proper deployment of the shelters difficult because the bottom of the shelters had gaps.

The Forest Service did not rank the significant causes in order of impact or identify one pivotal decision or omission. However, the Forest Service made clear that the primary errors were (A) the failure to withdraw the crew from the canyon when the initial attack failed and the supervisors realized that the fire was growing, which resulted in the entrapment, and (B) the failure to use available time to ensure that the crew properly deployed their personal fire shelters on the best available site.

Although the status of the land as a component of a national forest does not create federal criminal jurisdiction, the status of the four decedents as Forest Service employees does confer jurisdiction on federal authorities to investigate and, if appropriate, to prosecute the Forest Service supervisors who deployed and directed the fire crew during the Thirtymile Fire. Section 1114 of Title 18 of the United States Code provides in relevant part that “[w]hoever kills . . . any officer or employee of the United States or of any agency in any branch of the United States Government . . . while such officer or employee is engaged in . . . the performance of official duties . . . shall be punished . . . (2) in the case of

manslaughter, as provided under section 1112;” Section 1112(a) of Title 18 defines manslaughter as “the unlawful killing of a human being without malice.” This section encompasses involuntary manslaughter, which applies when the death occurs “[i]n the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.” 18 U.S.C. § 1112(a).

In order to convict Mr. Daniels of involuntary manslaughter, the Government would have to prove five essential elements:

First, Mr. Daniels committed a lawful act, done either in an unlawful manner or with wanton or reckless disregard for human life, which might produce death.

Second, Mr. Daniels’ act was the proximate cause of the death of the victim. A proximate cause is one which played a substantial part in bringing about the death, so that the death was the direct result or a reasonably probable consequence of the defendant’s act.

Third, the killing was unlawful (without justification or excuse).

Fourth, Mr. Daniels either knew that such conduct was a threat to the lives of others or knew of circumstances that would reasonably cause him to foresee that such conduct might be a threat to the lives of others.

Fifth, the decedent was a federal employee who, when killed, was engaged in the performance of official duties.

See United States v. Shortman, 91 F.3d 80, 81-82 (9th Cir. 1996); United States v. Keith, 605 F.2d 462, 463 (9th Cir. 1979); 9th Cir. Crim. Jury Instr. 8.92 (2003).

Specifically, Mr. Daniels, the Crew Boss Trainer and the Incident Commander, while lawfully engaged in suppressing a wildfire, wantonly and with reckless disregard for human life exposed Forest Service firefighters under his command to an obvious risk of death by directing them to fight the wildfire in a manner that violated standard or accepted safety procedures.

During interviews or discussions with the Forest Service Safety & Accident Investigation Team, OSHA, the Forest Service Administrative Review Team, and the Forest Service Oral Reply Team, Ellreese Daniels did not assert that he was unqualified or not properly trained for the job of Incident Commander on the Thirtymile Fire or that Forest Service fire managers gave him an assignment on July 10, 2001, that was beyond his capabilities. On the contrary, during his

recorded interview with representatives of the Safety & Accident Investigation Team and OSHA two days after the fatalities, Mr. Daniels stated that he is a Lead Forestry Technician and that his "main job is initial attack supervisor." He further said that he had 24 years of experience fighting fires and that he was a Crew Boss Trainer. Mr. Daniels explained: "I'm Division/Group Supervisor qualified, what I do is when new crew bosses come into the organization, I was appointed as a new crew boss trainer, just because of the number of years that I have and experience that I have, and the trust level of some of the overhead teams." He told the Administrative Review Team that he had been a Division Group Supervisor for about five years. In the declaration for the Administrative Review Team, Mr. Daniels explained that "[m]y job as a Crew Boss Trainer is to shadow the Crew Boss Trainee and answer questions and if he or she didn't feel comfortable then I would take over."

Barry George, the Methow Valley Ranger District's Assistant Fire Management Officer, traveled to the the Thirtymile Fire on the afternoon of July 10th. Mr. George met with Mr. Daniels after Mr. Daniels and Mr. Kampen had disengaged NWR # 6 from firefighting operations and withdrawn the crew to the lunch spot on west side of the river. Mr. George asked Mr. Daniels if he was

comfortable acting as the Incident Commander (IC) for the fire that afternoon.

Mr. Daniels gave Mr. George an affirmative response.

Every firefighter, and especially supervisors, are familiar with the ten Fire Orders and eighteen Watch Out Situations. I interviewed OSHA Compliance Officer Michael Bonkowski, who participated in the investigation of the Thirtymile Fire and who interviewed Mr. Daniels on July 12, 2001, and August 9, 2001. Mr. Bonkowski informed me that the Fire Orders and Watch Out Situations are accepted by federal and by many state fire fighting agencies and that OSHA views them as industry standards for safe wildland firefighting operations.

When Mr. Daniels permitted the engines, which had just arrived, to proceed up the canyon and then he took two squads up the canyon to assist the engines with spot fires, Mr. Daniels violated several Fire Orders:

Fight fire aggressively but provide for safety first;

Recognize current weather conditions and obtain forecasts;

Establish lookouts in potentially hazardous situations; and

Determine safety zones and escape routes.

Mr. Daniels also ignored several Watch Out Situations:

Fire not scouted and sized up;

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Unburned fuel between you and fire;

Cannot see main fire; not in contact with someone who can;

Weather becoming hotter and drier;

Getting frequent spot fires across the line; and

Terrain and fuels make escape to safety zones difficult.

Given the steep canyon walls, and the vegetation, the road was the only viable escape route from the canyon. Mr. Daniels acknowledged in the videotaped interview on July 12, 2001, that green foliage had been burning earlier in the day, which he recognized was unusual. Moreover, Mr. Daniels and Mr. Kampen disengaged the fire earlier in the day after trees began torching, which generated airborne embers that caused spot fires. In the videotaped interview, Mr. Daniels said that the fire had made "pretty intense" quarter-mile runs; that the relative humidity had fallen to about 8 or 9%; that the wind was about 17 mph; and that the winds were pushing up canyon; after he disengaged the fire on the east side of the river and pulled the crew back to the lunch area. These conditions would support extreme fire behavior. Nevertheless, Mr. Daniels re-engaged the fire without posting a lookout who could see what the fire was doing. Similarly, Mr. Daniels did not send anyone to scout the fire before re-engaging. He did not

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inform Gregory House in Lead 65 that the engines or NWR # 6 was engaging the fire. Mr. House told me that he assumed Mr. Daniels and his crew were at the head of the fire. He could not see the engines or the firefighters in their yellow uniforms. If Mr. Daniels had told Mr. House that he intended to re-engage the fire by moving up the canyon, Mr. House would have told him that it looked bad.

When Air Attack returned over the canyon about ten minutes before the entrapment, Gabe Jasso contacted Mr. Daniels. He too assumed that NWR # 6 was still disengaged. Mr. Daniels did not inform Mr. Jasso of the location of the engines or the crew. Mr. Jasso took photographs shortly before the entrapment which show that the canyon floor was covered in smoke.

By violating several Fire Orders and ignoring several Watch Out Situations, Mr. Daniels' conduct resulted in the entrapment. When he retreated to a location up the canyon, Mr. Daniels again engaged in gross negligence by failing to prepare the crew for a possible deployment. Even though Mr. Daniels had been surprised by the intensity of the fire behavior earlier in the day and had been surprised by the fire when it entrapped a portion of the crew, he ignored the possibility of a burnover and instead told crew members that he expected the fire to burn around them.

I interviewed firefighter Beau J. Clark. He was assigned to Squad # 1, with Tom Craven as his Squad Boss. He joined the Forest Service in 2001; the Thirtymile Fire was his second fire. Mr. Clark told me that recognizing and being aware of weather conditions was part of Fire School Training. Although he knew that weather for the day was very hot, dry, and low relative humidity, Mr. Clark depended on his supervisor to direct him through whatever situation might arise. He commented that a person on his second fire is not going to question the decisions and the directives of a crew boss with 25 years of experience even if the weather conditions create danger because they would support extreme fire behavior.

I interviewed Jason W. Emhoff. He was assigned to Squad #1, with Tom Craven as the Squad Boss. The summer of 2001 was his third season fighting fire with the Forest Service. Mr. Emhoff expressed the opinion that Mr. Daniels should have taken into account the make up of the crew before re-engaging. There were so many rookie firefighters and also the crew was comprised of people from different ranger districts who had never worked together. He felt Mr. Daniels should have briefed everyone when they arrived at the deployment site, told them what the plan was, and asked for questions from the group.

I interviewed Scott Scherzinger, who was a sawyer assigned to Squad # 1 with Tom Craven as the Squad Boss. Mr. Scherzinger explained that although the crew initially believed that the fire would burn by them, the crew began to become concerned they might have to deploy when spot fires began occurring on the hillsides and it started raining down embers. Mr. Scherzinger and Beau J. Clark asked Mr. Daniels what was going to happen. According to Mr. Scherzinger, Mr. Daniels replied that he hoped that the fire would blow by them. They knew where the fire was coming from and could see it getting darker from the smoke. Mr. Scherzinger said that the smoke column was building, there were 200-foot flames through the tops of the trees, and they could hear the fire coming through the trees. Then the embers started coming down. The fire progressed from spot fires to flames coming over them, all within about 5 to 10 minutes, more likely 5 minutes. It went from a situation where conversation was still possible to sounding like a freight train was coming over them. According to Mr. Scherzinger, he made his own decision to deploy his shelter. He kept his pack on when he entered the shelter, although the training is to remove the pack and to leave the pack outside the shelter. Mr. Scherzinger had fusees in his pack, which fortunately did not ignite. He did place the saw and the fuel in the van before the burnover.

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I interviewed Elaine A. Hurd, who was assigned to Squad # 2 with Tom Taylor as the Squad Boss. She was a rookie; the Thirtymile Fire was her first fire. There was no preparation for deployment; neither was there any preparation of the site for deployment. No one ever made sure that each person had gloves, a helmet, and other items needed for deployment or that each person had taken their pack off and set it out of the way. Mr. Daniels only told them, initially, to “get your shelters out and shield yourselves”, which they did at first, but then got inside the shelters shortly. Ms. Hurd stated that she believes that they all should have been in a straight line to deploy. She remembered from somewhere, guard school (basic firefighter training) maybe, that deploying in a line helps to deflect the heat better.

I interviewed Entiat Hotshot Superintendent Marshall Brown.

Corroborating Ms. Hurd, Mr. Brown stated that the proper procedure for a deployment is to line the crew up in a row to maximize the reflective power of the shelters. During a discussion with Ken Snell, a member of the Oral Reply Team and the current Director of Fire and Aviation for the Forest Service’s Pacific Northwest Region, he confirmed that personnel are trained to group the shelters together to enhance their reflective power.

During interviews, several current and former Forest Service employees told me that one segment of the wildland firefighting community views deployment of fire shelters as an occurrence to be avoided because it is an acknowledgment of an error that led to the event and because it brings into question the toughness of the firefighter. When I interviewed Gabe Jasso, he commented that Mr. Daniels sounded almost apologetic when Mr. Jasso re-established radio contact and asked if the crew had deployed shelters.

Material False Statements

In order to convict Mr. Daniels of making a false statement, in violation of 18 U.S.C. § 1001, the United States would have to prove beyond a reasonable doubt the following elements:

First, Mr. Daniels made a false statement in a matter within the jurisdiction of an agency (Forest Service, USDA, or OSHA, U.S. Department of Labor) of the executive branch of the United States;

Second, Mr. Daniels acted intentionally, that is deliberately and with knowledge that the statement was untrue; and

Third, the statement was material to an activity or a decision of the agency of the United States because the statement could have influenced the activity or the decision.

9th Cir. Crim. Jury Instr. 8.66 (2003).

A. Fire Engines Did Check In With IC Daniels Upon Arriving at the Fire

Count Eight alleges that, on August 9, 2001, during a taped interview with a representative of the Occupational Safety and Health Administration (OSHA), in response to a question as to whether Mr. Daniels knew that two fire engines had arrived at the fire, Mr. Daniels stated that neither of the two fire engines, which were designated as Engine 701 and Engine 704, stopped to talk to Mr. Daniels or to the Crew Boss Trainee for the Northwest Regular # 6 firefighting crew when they arrived at the Thirtymile Fire on the afternoon of July 10, 2001; that the engines were "doing their own thing;" and that neither of the engines ever contacted Mr. Daniels or the Crew Boss Trainee. Pete Kampen was the Crew Boss Trainee.

On March 14, 2002, the Forest Service Administrative Review Team, which was examining the conduct of Forest Service employees who worked on the Thirtymile Fire, interviewed Mr. Daniels. The substance of the interview was

reduced to a typed declaration, which Mr. Daniels signed on March 28, 2002. The declaration states that Mr. Daniels is making the “following statement freely and voluntarily knowing that this statement may be used in evidence.” The declaration further provides that Mr. Daniels understands that “this statement is not confidential and may be shown to any interested party on a need to know basis for purposes of making administrative decisions to the extent allowed by law.” Count Nine alleges that Mr. Daniels stated to the Administrative Review Team that neither of the two fire engines, which were designated as Engine 701 and Engine 704, checked in with Mr. Daniels when they arrived at the Thirtymile Fire on the afternoon of July 10, 2001.

In his typed declaration, Mr. Daniels stated that he himself had served as an engine foreman for about four years. Mr. Daniels’ declaration further read: “I was asked if as the IC [Incident Commander] I would expect the engines to check in with me. As IC I would expect the engines to check in. As long as I am assigned to that piece of ground then the engines should check in with me. . . . The engines did not check in with me.” The Administrative Review Team asked Mr. Daniels if he knew the engines’ mission. Mr. Daniels’ declaration read: “The only thing I knew they were for was to replace two crews.” The Dispatch Log

reflects that Mr. Daniels requested two additional crews as reinforcements at about 12:30 p.m. He repeated the request for two more crews at 1:43 p.m.

The Forest Service proposed to take disciplinary action against Harry Dunn, the foreman of the larger of the two fire engines, Engine 701, on the ground that he proceeded up the Chewuch Canyon and engaged the fire without checking in with Incident Commander Ellreese Daniels. The smaller engine, Engine 704, was operating under the direction of Mr. Dunn. Mr. Daniels' assertions that the engines did not check in with him was material to both the Forest Service and OSHA because the engines moving up canyon beyond the lunch spot and engaging the fire was the first step in the chain of events that resulted in the entrapment of two squads of the NWR # 6. Engine 701 went up the canyon, encountered a spot fire, sprayed the spot fire, and then requested Mr. Daniels to bring firefighters up to the spot to dig a line around the spot. The firefighters were unable to retreat down their escape route before the fire burned across the road and entrapped them.

I interviewed Harry Dunn. He has worked for the Forest Service since 1974. Mr. Dunn had experience on two Hotshot crews and as an engine crewman, before becoming an Engine Crew Foreman in 1994. Mr. Dunn explained that