

NLWJC - Kagan

Counsel - Box 020- Folder 005

**[Theories About the Incidents At
Ruby Ridge and Waco From
Private Individuals and Groups][1]**

THEORIES ABOUT THE INCIDENTS AT RUBY RIDGE AND WACO
FROM PRIVATE INDIVIDUALS AND GROUPS

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MEMORANDUM

To: Dick Morris
From: Marc A. Schwartz
Re: The Raid and Attack on Mt. Carmel, Waco, Texas
Date: 7/10/95

On Wednesday, July 19, the House of Representatives will be conducting hearings on the ATF assault on Mt. Carmel, the home of the Branch Davidian's and their leader Vernon Howell a/k/a David Koresh, as well as on the subsequent 51 day siege of the compound by the FBI and the eventual attack on the compound. In the course of the hearings, there are several issues that are likely to be raised. I have looked into the possible activities that are most likely to spark congressional inquiry. For each of these issues, I have compiled a list of official responses already given by the Treasury and Justice Departments. The activities are broken down into 5 categories:

- I) The Warrant
- II) The ATF Raid
- III) The FBI Stand-Off & Negotiations
- IV) The Attack
- V) The Aftermath

Under each heading, I include *criticism* of the government agencies with respect to that category, some of the *evidence* in support of the criticism, and the *government position* on the issue.

I) The Warrant

Criticism- Several critics contend that the ATF framed the Branch Davidian's, and rely on the warrant as evidence of the framing. One reason offered for the frame-up is that "the ATF began searching for a high-profile operation soon after it became apparent that Bill Clinton would become the next president of the United States... ATF officials perceived an opportunity to expand the scope and powers of their agency (in light of Clinton's strong anti-gun message)... (the) raid was planned with an eye to the Senate Appropriations Subcommittee on the Treasury... scheduled for early March." (From the Ashes; Making Sense of Waco, by James R. Lewis, p. 88. Hereinafter cited as Lewis.)

Evidence- The ATF originally believed the Branch Davidian's were the perfect target. "The Davidian's were, however, such a poor choice for this raid that agency officials had to manufacture evidence to support a warrant: The Branch Davidian's were, in other words, *framed* by the ATF." (Lewis, p. 90, emphasis in original). "During a congressional investigation held after the raid, agency chief Stephen Higgins confessed to the weakness of the warrant." (The Ashes of Waco, By Dick Reavis, p. 35. Hereinafter cited as Reavis) The affidavit compiled to obtain the warrant, prepared by ATF Special Agent Aguilera, "concealed traces of bad faith." (Reavis p. 36) Parts of the affidavit were straight lies, including the reference to a "clandestine" firearms publication, and other parts misrepresented the situation by excluding key information. The biggest point of contention with respect to the affidavit deals with the charges of child abuse allegedly perpetrated by Koresh. Critics of the ATF cite two problems with that charge. *First*,

all independent investigations of Koresh prior to the raid failed to turn up evidence of child abuse. In the wake of the April 19th fire, FBI chief William Sessions confessed that the Bureau had "no contemporaneous evidence" of misdeeds toward children. *Second*, these types of accusations were totally irrelevant to the case at hand. ATF's responsibility lies in the enforcement of firearm laws. Other matters lie beyond the jurisdiction of the ATF and fall within the purview of the state.

Government Response- The 1993 Department of the Treasury Report on the ~~raid~~ states that in November 1992, the U.S. Attorney's office in Waco believed that there was sufficient evidence to meet the requirement of "probable cause". In reaching such a conclusion, the U.S. Attorney's office relied on evidence from the following sources:

- An "incident report" filed in the Waco sheriff's office regarding Koresh's alleged attempt to kill former Branch Davidian Leader George Rhoden in 1987.
- Shipments to the compound of weapons and explosives.
- Sounds of machine gun fire and explosives coming from the compound.
- Interviews of former cult members.
- Visits and reports from the Texas Department of Protective and Regulatory Services.
- Background checks of compound residents.
- Reports of ATF experts.
- Interview with former Davidian member David Block.
- Evidence compiled from undercover house surveillance and from undercover agent Robert Rodriguez.

II) The ATF Raid

Criticism- Critics contend that the raid was not necessary. The ATF had ample opportunity to either arrest Koresh outside of the compound or arrest him peacefully inside the compound. Furthermore, once it was decided that a raid should take place, it was poorly planned by ATF supervisors.

Evidence- Of those who argue that such a raid was not necessary, they maintain that Koresh could have been arrested on one of his many forays into Waco. ATF claimed that they had not seen Koresh outside the compound for as long as eight months. Yet videotape clearly shows him in town in December, and The Waco Tribune confirmed that Koresh had been into Waco as late as February 22. Even if the ATF reasonably believed that the arrest must be made within the compound, there was sufficient evidence that Koresh would have gone peacefully. "In 1988, a sheriff and his deputies confiscated weapons, made seven arrests, with the Davidian's cooperating. There were no injuries and no deaths. In 1992, three Child Protective Service Workers and two sheriff's deputies were in and out of the compound over a two-month period, investigating child abuse and sex perversion. There were no injuries and no deaths." (Lewis p.72)

The raid itself was poorly planned and executed. The entire plan for the assault was built around *secrecy*, *surprise* and a *covert* signal from an undercover agent inside the compound that the weapons would be locked up when the raid began. Yet prior to the raid, undercover agent

Rodriguez informed superiors that Koresh had been warned and was ready. The warning was unheeded and the plan went ahead anyway. Koresh probably found out about the raid from two possible sources, both of which are tied to the ATF. The first possible source was from the media. The ATF themselves alerted the media to the pending raid "because they thought they were going to have an easy-walk through... Nor did they think much of secrecy in town. Many Waco citizens saw numerous ATF agents, dressed in black and camo SWAT-type gear scurrying around various hotel lobbies early that fateful morning... The news media listened to scanner traffic on unsecured portable radios and cellular phones, talking about the raid." (Lewis, p. 75) The second possible source of the tip-off was a botched helicopter surveillance operation. Several ATF helicopters were to serve as a "command platform". The helicopters were scheduled to arrive seconds before the raiders piled out of cattle trailer rigs to start the landing assault. Yet the helicopters, according to media reports, made several passes over Mt. Carmel at low altitudes. The ATF claims that prior to the arrival of the agents on the ground, they (the helicopters) were fired upon from the compound. The survivors claim the helicopters fired first. Yet either way, the residents of the compound were alerted to what was about to happen on the ground.

Other criticisms of the raid include:

- ATF based the training and assault out of Waco. "Motel and restaurant employees have big ears." The raid should have been based out of Dallas or Austin. Waco was much too close to the target area.
- The assault was scheduled for 9:00AM, when the conditions for an assault are not nearly as good as an early morning assault.
- The ATF went in without proper cover and were sitting ducks in the open terrain.
- Teams were unable to communicate with each other due to the lack of sufficient equipment.
- There was no ambulance on call, should any agent or resident require medical attention.
- The assault, according to the ATF, was practiced for months. Yet some agents were not briefed until the preceding day.

Government Response- The Treasury report indicates that the plan was never actually followed on the day of the raid. The report criticizes the ATF for:

- Not fully exploring the option of arresting Koresh outside the compound.
- Intelligence failures.
- Having no contingency plan.
- The command structure was ineffective for such a raid.

In conclusion, the report pins the failure on the raid on the assumption by the ATF that "an operation involving more than 100 agents against an extremely well armed group of hostile cult members was just like any other enforcement action, only bigger... The agents were unprepared to deal with the ambush when it occurred." (Treasury report, p. 156)

III) The FBI Stand-Off & Negotiations

After the raid, the FBI was brought in to manage the situation. Several concerns have been raised regarding the tactics used by the FBI.

Criticism- The FBI employed dubious and ineffective methods of “psychological warfare” in pressuring members to surrender. The methods employed forced the Davidian’s hands and insured that a peaceful solution would never be reached.

Evidence- The primary criticism leveled against the FBI was that they did not understand their enemy. “Neither (of) the officials in charge... had a clue about the biblical world which this group inhabited.” (Lewis p. 15) “The single most damaging mistake on the part of federal officials was their failure to take the Branch Davidian’s beliefs seriously... It was necessary to grasp the role these (religious) beliefs played in their lives.” (Lewis p.41) The government actions (during the stand-off) increased the resolve of those in the compound by in effect validating Koresh’s prophetic visions with respect to the fifth seal. By increasing Koresh’s power, the FBI was unable to foster dissent within the residents. “In order to have any chance for a peaceful resolution... one would need to enter the apocalyptic world of Koresh... It was obvious that they were willing to die for what they believed, and they would not surrender under the threat of force.” (Lewis, p.253)

Other criticisms focus on specific actions taken during the negotiations. They include:

- Loudspeakers were set up to blare dentists drills, Tibetan chants and tortured animal screams, and floodlights were set up to shine in on the compound during all hours. “If the FBI was concerned about protecting against child abuse, their actions only contributed to child abuse.” (Lewis)
- “Circumstances time and again made it clear that faraway powers, and not the negotiators, were indeed in charge... They’ve got things being relayed 1,000 or 1,500 miles back to D.C..” (Reavis, p. 209) Koresh, upon being told this, called the negotiators “professional waitresses.” Without respect for the negotiators, a compromise became impossible.
- FBI negotiators were unable to discuss the Feb. 28 raid with Koresh, claiming that it “involves the ATF and I’m with the FBI.”
- Negotiators refused at certain points to send in milk for the children.
- Davidian’s who sent out their children expected them to be taken to relatives, yet the FBI placed them with the Texas Department of Protective and Regulatory Services.
- During ongoing negotiations, the FBI released edited tapes of conversations to the media, which Koresh could hear on the radio. The edited tapes infuriated Koresh, making it impossible to reach a settlement.

Government Response- In Evaluation of the Handling of the Branch Davidian Stand-Off in Waco, Texas: Report to the Deputy Attorney General, by Edward S.G. Dennis Jr., the FBI’s negotiation strategy is analyzed, and the conclusion is reached that the negotiations were handled properly:

1) On the negotiation strategy, the report concludes that the “FBI tried to work within the framework of the Davidian’s beliefs... but Koresh was completely beyond the influence of religious arguments or religious scholars.”

2) Regarding the pressure tactics, the report concludes that such an approach was appropriate, as Dennis was not “confident that more members would have left the compound if (a) negotiating strategy had been followed more rigorously.” “Tactical actions designed to increase the safety

margin for agents were appropriately given priority over negotiating considerations.” This conclusion was reached despite the *negotiators belief at the time that such pressure tactics were a bad idea.*

3) The report further concludes that the FBI had sufficient advice from “behavioral experts”, and “took seriously the possibility that Koresh” was willing to die.

IV) The Attack

The *decision to attack and the manner with which the attack was planed and executed* have come under attack.

Criticism- An attack was unnecessary, as there was no evidence that the Davidian’s were planning mass suicide. Once the decision to attack was made, it was poorly planned and implemented.

Evidence- The primary reason cited for the attack was the fear that a mass suicide would occur in the near future, and the without an attack the children would be innocent victims. Yet a review of the conditions surrounding the three most famous religious mass suicides in history (Jonestown, Masada and Münster) reveal that suicide would be out of character for the Davidian’s. Thus an attack was unnecessary. Claims by the FBI after the fact that suicide indeed did take place is not credible, as no real autonomous investigation ever took place.

The attack itself, critics claim, was poorly planned. CS gas was used in the attack, and manufacturers warned against its use indoors, in part because heavy exposures have been cited as a cause of death in a report by Amnesty International. The U.S. Army manual on civil disobedience reports that particles from the gas can give off lethal fumes. In 1993, the U.S. signed an international treaty banning CS gas, but the ban does not apply to domestic use. Furthermore, FBI officials stopped by local emergency rooms at 5:00AM prior to the attack to inquire about their capacity to handle burn victims, suggesting that they expected a fire. Finally, on April 19, “conditions were *poor* for a tear gas attack, but *ideal* for setting fire to a wood frame structure.” (Lewis p. 116, emphasis in original)

The tanks that rammed the compound during the attack, instead of creating escape routes, destroyed any chance the Davidian’s had of escaping. “They demolished the stairways connecting the building’s first and second floors, and also pushed debris over a trapdoor... leading to the fresh air outside... The CEV’s struck, sending chunks of concrete tumbling onto the heads (of those inside).” (Reavis, p.275) Surviving residents claimed that the tanks knocked over lanterns and other combustible items, which is reasonable, as electricity was cut off and the only source of heat was from gas lanterns. Residents claim that the tanks severed the only communication lines from the compound, making surrender impossible. Television footage shows that once the fire began, the CEV tankers, instead of merely standing by, bulldozed debris and remaining sections of the wall into the blaze, apparently in “an attempt to destroy bits of evidence.” (Reavis, p.275) Critics also cite the fact that fire trucks were prohibited from putting out the fire until nothing was left as evidence of the FBI’s insensitivity and willingness to let all the residents die.

Government Response- The report to the Deputy Attorney General concludes that the fire inside the compound was deliberately set and “was not started by the FBI’s tear gas insertion operations.” The report also mentions that evidence of a number of victims that died from gunshot wounds suggests suicide. One released member said that there was a suicide plan. “I conclude” the report said, “that the events of April 19 were the result of David Koresh’s determined efforts to choreograph his own death and the deaths of his followers in a confrontation with federal authorities to fulfill Koresh’s apocalyptic prophesy.” Finding that an indefinite siege was not a realistic option, the report concludes that an attack plan was warranted, and that the decision to use CS gas was “a reasonable one.” In anticipation of fire, the FBI had fire trucks close by, but would not allow them to enter the fire area for fear that the Davidian’s would open fire on the firefighters. In conclusion, the report states that “the FBI exhibited extraordinary restraint and handled the crisis with great professionalism.”

V) The Aftermath

Critics of the Waco incident also raise questions about government activities in the days and weeks after the attack.. These questions are likely to surface during the hearings:

- Why was the Waco investigation conducted by individuals that, in the words of CBS News, had “close ties to the FBI”?
- Why was the individual charged with investigating the arson a former employee of the ATF office that planned the raid, and whose wife was an ATF employee?
- What health threat were government officials worried about that led to the immediate bulldozing of the wreckage?

MEMORANDUM

TO: CHERYL MILLS and CHRIS CERF
FROM: CAROLYN ATWELL DAVIS
DATE: 6/19/95
RE: THEORIES ABOUT INCIDENTS AT RUBY RIDGE AND WACO BY
 PRIVATE INDIVIDUALS AND GROUPS

OVERVIEW

The incidents at Ruby Ridge and Waco are examples of the need to defend citizens against a hostile federal government. There is a government conspiracy to strip citizens of their fundamental rights. The federal government is in the hands of secular humanists and the self-indulging special interest groups.

RUBY RIDGE

- the marshals fired on the Weavers without warning
- the FBI engaged in deliberate and systematic torture of the Weaver family by calling out comments to Vicki Weaver, knowing she was dead
- there is a conspiracy by the federal government against people with "different" religious beliefs and unconventional lifestyles
- Randy Weaver was entrapped into selling sawed-off shotguns to the undercover agent

WACO

Committee for Waco Justice:

(Carol Moore, Alan Forschler, among others)

Raid:

- warrants were defective: faulty affidavit
- the Davidians' gun business was legal
- BATF ignored Davidians' attempts to cooperate
- BATF used excessive force
- dubious drug allegations to obtain National Guard helicopters for free
- agents killed by friendly fire
- BATF intimidation of the press

- BATF agents shot first
- BATF coverup
- Treasury Dept. coverup

Conclusions:

1. BATF drove the Branch Davidians to self-defense
2. An independent counsel should prosecute the responsible BATF agents and officials

Fire:

- possible illegal use of tanks
- FBI destroyed crime scene despite complaints
- FBI planned to gas and disassemble Mt. Carmel
- FBI pressure tactics replaced negotiations
- FBI misled Janet Reno on need for and dangers of assault
- President Clinton was hostile toward Branch Davidians
- Lack of fire precautions
- FBI demolition trapped people, according to statements by Davidians
- FBI started the fire by the demolition
- FBI and BATF crime scene coverup
- "Independent" fire investigator coverup
- Justice Dept. coverup

Conclusions:

1. FBI and Justice Dept. actions are responsible for the deaths of the Branch Davidians
2. An independent counsel should prosecute responsible FBI agents and FBI and Justice Dept. officials

Linda Thompson - American Justice Federation:
(woman who did the videotape)

- Mark Breault, former Davidian who sought revenge for being ousted by Koresh, invented allegations of child abuse
- Cult Awareness Network was instrumental in spreading lies about "religious weirdness" at Mt. Carmel
- the probable cause affidavit and search warrant were sealed by same judge who issued warrant, therefore the judge colluded in the lies and coverup
- the Davidians' weapons were legal
- BATF agents were killed by friendly fire during raid on 2/28
- Mike Schroeder, a Davidian working in town the day of the raid, was shot in the back by BATF agents while trying to get into the compound and his body left for days hanging on a fence, chewed by buzzards and wild dogs.
- tanks bashed holes in buildings not in order to spray gas, but to ventilate house so that fire would spread rapidly
- the 51-day siege was deliberate and systematic torture by FBI
- supplies of baby food to the compound were not delivered during siege
- Gov. Ann Richards did not order withdrawal of tanks after she claimed she had been tricked into ordering them
- FBI refused to allow journalists who questioned the federal actions into the press conferences.
- Federal government is engaging in tyrannical, Nazi-like tactics by calling a religion a "cult" and putting out false information about child molestation
- President Clinton, Attorney General Reno, FBI Director William Sessions and Treasury Secretary Lloyd Bentsen are murderers; we have cold-blooded killers running our country.

Unknown source from Internet:

The four BATF agents killed at Waco were ex-bodyguards of President Clinton. They are on a long list of persons who have recently died under suspicious circumstances who had some connection to the Clintons. This list includes Arkansas state troopers, former members of the Clinton campaign, and persons who travelled with the Clintons. This is known as the "Clinton Body-Count."

Mike Cumpston, "The Aftermath of Mount Carmel," U.S. Gun, 10/93:

- BATF knew or suspected that the weapons listed on the search warrant were not in the possession of the Davidians
- tanks ran over containers of lantern fuel, upset a lamp and started the fire on 4/19
- lies about the actions at Mt. Carmel were propagated by NBC in its movie about the incident in order to boost its ratings
- female agents of BATF, alleged victims of sexual harassment and retaliation by the Bureau, suggest that the Mt. Carmel raid was designed as a media event to restore the public image of the agency and help the agency's prospects at 1993 Congressional budget hearings; prompted by a television program on sexual harassment within BATF
- Koresh could have been arrested away from the compound, avoiding the raid altogether; claims that he never left the compound were false



Office of the Assistant Attorney General

Washington D.C. 20530

FACSIMILE COVER SHEET

TO: Cheryl Mills, John Yarowsky

FAX NO: 456-1647

FROM: Kent Marcus - Off. Leg. Aff.

PHONE NO: 514-2141

CITY: _____

DATE: 7/17/95

NO OF PAGES: 2 (EXCLUDING COVER)

COMMENTS: Info. for Waco Hearing Mtg. this evening

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

To: Meeting Attendees
From: Kent Markus, DOJ 
Date: July 17, 1995
RE: Waco Hearing Meeting

We will be holding the meeting at 8:00 this evening in the Attorney General's Conference Room at the Justice Department. Attendees will include representatives from Treasury, Defense, Justice and the White House. The purpose of the meeting is to preview possible questions to be asked of witnesses from the cabinets, to share information on the hearing, and to coordinate message. We have requested that each agency also bring a representative from their public affairs component.

You may enter the Justice Department at the 10th Street gate, located between Constitution and Pennsylvania Avenue, NW. Your government credentials will be required by security. After clearing security, walk through the courtyard to the second entryway on the right. After entering the building, walk straight to the end of the hallway to the elevators on the left. Take the elevators to the 5th floor, and the Attorney General's Conference Room may be entered through Room 5123.

Thank you for attending on such short notice.

Tentative Witness List for Waco Hearings**FIRST DAY**Opening Panel: An Introduction to the Critical Issues

Dick Reavis An investigative journalist with excellent credentials who has written a book on Waco published by Simon and Schuster

Stuart Wright Editor/author of new book on Waco published by University of Chicago Press containing views of 18 scholars

Yahns Proposal by Democrat Committee

First General Inquiry: Investigation and WarrantsPanel A

Lt. Gene Barber: Sheriff;
favorable to ATF, if we
get all 3, balance

Gerald Goldstein President of National Association of Criminal Defense Lawyers

Jim Jeffries An attorney familiar with firearms laws who can speak to the accuracy of the language in the search warrants

Henry McMahon Firearms dealer who did business with Koresh

David Tibbedeux Non-Davidian resident at Mt. Carmel during investigation, raid and fire. (Currently has a scheduling conflict)

Olympic Arms Manufacturer of firearms identified in ATF affidavit

Legal expert
Neighbor
Panel B Henry Hudson or Bob Muller (DOJ's suggestion) -- Melanie Sloan 225-6906
Servanka: neighbor who heard Mt. Carmel gun fire (good credible)

Davy Aguilera ATF Special Agent

Chuck Sarabyn Former ATF ASAC in Houston

Earl Dunagan Former ATF Acting SAC in Austin

Bill Johnson Assistant United States Attorney

Dan Hartnett Former ATF Deputy Director for Enforcement

ATF firearms expert who advised Davy Aguilera Ed Owens

~~Lawyer~~
Jeff Moulton
Dr. Bruce Perry

Treasury Reviewer

Baylor Medical College

McCotton has said no posse com. issue except drug nexus concern; but way panel structure creates opposite impression

SECOND DAY (Zeliff's committee controls)

Second General Inquiry: **Planning the Raid and the Military**

ATF and execution
Panel A
Panel B
single panel

Panel A

Captain Cloyd Moore (went from Bragg to Hood)

Robert Sanders Former ATF Deputy Director for Enforcement

COL James Smyser Military Expert on Posse Comitatus Act - not right guy

LTC Richard Rosen Military Expert on Posse Comitatus Act - not right guy

John C. Coonce DEA expert on Methamphetamine Labs

Lt. Col Lindley JAG Officer (wrote memorandum questioning the legality of DOD activities)

Military Expert Expert on Military Assistance to LEAs

law enforcement assistance

Military Expert Expert on Military Assistance to LEAs on counter-drug matters

Lew. Moretti Treasurer Reviewer or Ishimoto (tactical planners)

Panel B - Tactical Planning of "Dynamic Entry"

Phillip Chohnackl Former ATF SAC in Houston

Chuck Sarabyn Former ATF ASAC in Houston

Major Petree Army officer in charge of SF soldiers who trained ATF agents

General Pickler Commander in charge of decision to do ATF training mission

William Buford ATF RAC in Little Rock

SSG Robert Moreland Special Forces Trainer

SFC Dunn Special Forces Trainer

* Certain Military Individuals with Classified Names

reduce to one

Panel C - ATF and Treasury Approval of "Dynamic Entry"

Steve Higgins Former Director of the ATF

John Simpson Former Acting Assistant Secretary at Treasury

Christopher Cuyler ATF Liasion for Ass't Secretary

Robert Altman Former Deputy Secretary of the Treasury

Michael Langan Former Acting Deputy Ass't Secretary

THIRD DAY

Third General Inquiry: The Raid

Panel A

Ira Glasser Executive Director of the ACLU

Joyce Sparks Texas Department of Child Protective Services

George Morrison LAPD special ops officer who reviewed the Treasury Report

[Danny Coulson Founder of FBI Hostage Rescue Team -- McNulty said scratch him from list

Tim Evans Defense attorney who represented Davidians;
his story of what he thought Davidians thought that day (what yams)

Panel B

Robert Rodriguez ATF undercover agent

Chuck Sarabyn

Phillip Chalnacki

Sharon Wheeler ATF special agent who was in charge of media relations

Dan Hartnett

Lew Merletti — TREASURY REVIEWER
Texas Ranger

FOURTH DAY

The Treasury Department Response

Ronald K. Noble Undersecretary for Law Enforcement

John McGaw Director of ATF

FIFTH DAY

Fourth General Inquiry: Negotiations

Panel A

Dick DeGuerin and Jack Zimmerman Lawyers for Koresh and Schneider

Panel B

Park Dietz behavioralist

Dr. Philip Arnold Reunion Institute, Houston

Dr. James Tabor Associate Professor of Religious Studies, University of North Carolina at Charlotte and author of the book Why Waco, published by the University of California Press

Dr. Bill Austin Baylor Univ; FBI talked w/ him about Koresh's ideology

Panel C

Maurice Cook Captain of the Texas Rangers

David Burns Captain in the Texas Rangers

J. Brantly Foster Retired from Texas Rangers

Panel D

Pete Smerick Former Criminal Investigative Analyst with the Investigative Support Unit of the National Center for the Analysis of Violent Crime at the FBI Academy in Quantico

Jim Cavanaugh ATF Special Agent who served as the initial negotiator

Byron Sage FBI ASAC in Austin *dealt w/ lawyers personally*

Gary Noesner Chief Negotiator

Jeffrey Jamar FBI Tactical Coordinator

SIXTH DAY (2 days comm.)

Fifth General Inquiry: The CS Gas Plan -- Planning and Approval

Panel A

- George Uhlig Scientist
- Dr. Harry Stone Harvard University
- Aldrich Chemical Producer of CS gas
- William Marcus Toxicologist
- DOD Chemical Warfare Corps

* Additional CS gas experts

DR. UPSHAW } definitive scientific
DR. PAUL RICE } study on effects of CS gas

Panel B - Formation of the Gas Insertion Plan

- Floyd Clark Former FBI Deputy Director
- Larry Potts FBI Deputy Director
- Anthony Betz FBI CS Gas Expert
- Dick Rogers Former head of HRT
- Jeffrey Jamar

Byron Sage

Ronald McCarty Ret. LAPD; OUS expert

-- call McNulty

Panel C - Approval of the Gas Insertion Plan

- Floyd Clark Dist Director FBI (resigned)
- Webb Hubbell Former Associate Attorney General
- Bernard Nussbaum Former Counsel to the President
- Bruce Lindsay

2/25/95
McNulty -- McCollum
what do they know about
conversations
who gave

Dr. Harry Salem Defense Department Toxicologist

Mark Richard career deputy in com division

SEVENTH DAY

Sixth General Inquiry: The Gas Insertion and the Fire

Panel A

Rick Sherrow **Fire expert**

Clive Doyle **Former Davidian**

*** Additional Fire Experts**

Panel B

Paul Gray **Houston Fire Department, Leader of Fire Review Team**

HRT Members

Jeffery Jamar

Larry Potts

Janis Quinner professor; lead special arson analysis

EIGHTH DAY

Justice Department Response

Janet Reno - Attorney General of the United States

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Fourth Congress

FAX TRANSMISSION

TO:

CHERYL MILLS

FAX:

456-1647

FROM
TOM DIAZ
U.S HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
CRIME SUBCOMMITTEE

No. of Pages Following:

7

Phone (202) 225-7087
FAX (202) 225-1845

The provisions with reference to punishment of persons subject to military or naval law as provided in the Articles of War and the Articles for the Government of the Navy were omitted, as was the exception of such persons from the punishment provisions of this section. The Articles of War and Articles for the Government of the Navy are sufficiently complete in themselves to authorize the adequate punishment and military or naval personnel for violations of general criminal statutes as well as for disobedience of orders. See Articles of War, Article 96, section 1568 of Title 10, U.S.C. 1940 ed., Army, and Articles for the Government of the Navy, Articles 1, 4, 22, 23, section 1200, of Title 34, U.S.C. 1940 ed., Navy.

The revised section, in this respect, places violations on the same basis as other misdemeanors in violation of the general statutes of the United States and authorizes punishment of persons subject to military or naval law under such law, or in case the military or naval authorities turn the violator over to the civil authorities, the trial and punishment may be under the general law.

The phrase "and/or" appearing twice in section 518a of Title 18, U.S.C., 1940 ed., was deleted to avoid uncertainty and ambiguity.

Words "shall be deemed guilty of a misdemeanor" were omitted because of definition of misdemeanor in section 1 of this title.

Changes were made in phraseology.

1949 Act. This section [section 35] makes the following changes in section 1384 of Title 18, U.S.C.:

1. In the first paragraph, substitutes "Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, and any two or all of them" for "Secretary of the

Army or the Secretary of the Navy, or both", and substitutes "Army, the Navy, or the Air Force," for "Army, or the Navy, or both," in view of the establishment in 1947 of the Department of the Air Force, headed by a Secretary.

2. In the second paragraph, substitutes "The Secretaries of the Army, Navy, and Air Force" for "The Secretaries of the Army, and Navy", for the same reason given in item 1 above.

3. In the third paragraph, substitutes "Department of the Army, Navy, or Air Force" for "War or Navy Department" for the same reason given in item 1 above.

1949 Amendment. Act May 24, 1949 made section applicable to the Air Force which was established as a separate department in 1947, headed by a Secretary.

Transfer of Functions. The Secretary and Department of Health, Education, and Welfare was redesignated the Secretary and Department of Health and Human Services by section 3508(b) of Title 20, Education.

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of Reorg. Plan No. 1 of 1953.

Legislative History. For legislative history and purpose of Act May 24, 1949, see 1949 U.S. Code Cong. Service, p. 1248.

West's Federal Forms

Sentence and fine, see § 7531 et seq.

Library References

Armed Services ¶40(1, 8).
C.J.S. Army and Navy §§ 42, 44, 47.

§ 1385. Use of Army and Air Force as posse comitatus

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall

① guide/interest
resources
② no program
③ suicide
④ children

be fined not more than \$10,000 or imprisoned not more than two years, or both.

(Added Aug. 10, 1956, c. 1041, § 18(a), 70A Stat. 626, and amended June 25, 1959, Pub.L. 86-70, § 17(d), 73 Stat. 144.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1385	10:15.	June 18, 1878, ch. 263, § 15, 20 Stat. 152; Mar. 3, 1899, ch. 429, § 363 (proviso); added June 6, 1900, ch. 786, § 29 (less last proviso), 31 Stat. 330.

Explanatory Notes. This section is revised to conform to the style and terminology used in Title 18. It is not enacted as a part of Title 10, United States Code, since it is more properly allocated to Title 18.

1959 Amendment. Pub.L. 86-70 eliminated provisions which made section inapplicable in Alaska.

Legislative History. For legislative history and purpose of Pub.L. 86-70, see 1959 U.S. Code Cong. and Adm. News, p. 1675.

Cross References

Assistance from Secretary of Defense in enforcement of prohibition of transactions involving nuclear materials, see section 831 of this title.

West's Federal Forms

Sentence and fine, see § 7531 et seq.

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C.J.S. Army and Navy § 3.

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CRIMES AND CRIMINAL PROCEDURE

structure, or building or leases or rents or contracts to lease or rent any vehicle, conveyance, place, structure, or building, or part thereof, knowing or with good reason to know that it is intended to be used for any of the purposes herein prohibited shall be fined under this title or imprisoned not more than one year, or both.

The Secretaries of the Army, Navy, and Air Force and the Federal Security Administrator shall take such steps as they deem necessary to suppress and prevent such violations thereof, and shall accept the cooperation of the authorities of States and their counties, districts, and other political subdivisions in carrying out the purpose of this section.

This section shall not be construed as conferring on the personnel of the Departments of the Army, Navy, or Air Force or the Federal Security Agency any authority to make criminal investigations, searches, seizures, or arrests of civilians charged with violations of this section.

(As amended Sept. 13, 1994, Pub.L. 103-322, Title XXXIII, § 830016(1)(H), 108 Stat. 2147.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 103-322, see 1994 U.S. Code Cong. and Adm. News, p. 1801.

LIBRARY REFERENCES

C.J.S. Armed Services § 184 et seq.

§ 1385. Use of Army and Air Force as posse comitatus

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.

(As amended Sept. 13, 1994, Pub.L. 103-322, Title XXXIII, § 830016(1)(L), 108 Stat. 2147.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 103-322, see 1994 U.S. Code Cong. and Adm. News, p. 1801.

LAW REVIEW COMMENTARIES

Crackdown: The emerging "drug exception" to the bill of rights. Steven Wisotsky, 88 *Hast. L.J.* 889 (1987). enforcement operations. 26 *Loy.L.A.L.Rev.* 1291 (1993). The Posse Comitatus Act as an exclusionary rule: Is the criminal to go free because the soldier has blundered? Larry L. Boesche, 61 *ND L.Rev.* 107 (1985). Locked and loaded: Taking aim at the growing use of the American military in civilian law

LIBRARY REFERENCES

C.J.S. Armed Services § 7.

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3. Purpose

U.S. v. Hartley, 486 F.Supp. 1348 [main volume] affirmed 678 F.2d 961, rehearing denied 688 F.2d 852, certiorari denied 103 S.Ct. 815, 459 U.S. 1170, 74 L.Ed.2d 1014, certiorari denied 103 S.Ct. 834, 459 U.S. 1183, 74 L.Ed.2d 1027. Posse Comitatus Act was intended as an attempt to end the use of federal troops to police state elections in ex-Confederate states. *U.S. v. Alfred*, C.A.5 (Tex.) 1989, 867 F.2d 856.

The Posse Comitatus Act was designed to limit direct active use of federal troops by civil law enforcement officers to enforce laws of nation. *U.S. v. Hartley*, C.A.5 (La.) 1986, 796 F.2d 112.

5. Armed Forces within section—Generally
Posse Comitatus Act's prohibition against use of Army or Air Force in law enforcement did not extend to Navy. *U.S. v. Yunis*, 1991, 924 F.2d 1086, 288 U.S.App.D.C. 129.

Section of Posse Comitatus Act imposing fine for willful use of Army or Air Force as posse comitatus does not apply to navy involvement in

[1] [LINK]

THE MASSACRE OF THE BRANCH DAVIDIANS

A STUDY OF GOVERNMENT VIOLATIONS OF RIGHTS, EXCESSIVE FORCE AND COVER UP

January 28, 1994

By Carol Moore, (c) 1994 [2][1]

In consultation with:

Alan Forschler
Ian Goddard
James A. Long
Richard J. Sanford
Timothy Seims
Andrew Williams

*read the Table of
Contents for an
overview of specific
factual allegations
(conclusions are marked with
yellow stickers)*

COMMITTEE FOR WACO JUSTICE, P.O. Box 33037, Washington, D.C. 20033,
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THE MASSACRE OF THE BRANCH DAVIDIANS A STUDY OF GOVERNMENT VIOLATIONS OF RIGHTS, EXCESSIVE FORCE AND COVER UP THE PUBLIC MUST KNOW THE TRUTH

Several year end television reviews of 1993 portrayed the deaths of 86 or more members of the Branch Davidian [76][2] religious group in Waco, Texas as a symbol of Attorney General Janet Reno's "heroism" for taking responsibility for their fiery deaths. Representative J.J. Pickle, chair of the Subcommittee on Oversight of the House Ways and Means Committee, summed up the feelings of many when he said of David Koresh, "The leader of that compound was a nut, and his followers agreed to live with a nut." [77][3] Many Americans consider the Branch Davidians to be the religious fanatics, child abusers and violent "gun nuts" government and the press have portrayed them as being.

Footnote [78][2] Six Branch Davidians died during the February 28, 1993 raid and, at least 80 during the April 19, 1993 fire. According to several Branch Davidians, in the last few years the group had come to call themselves "Students of the Seven Seals." However, survivors do accept the use of the term "Branch Davidian" since it is so well known at this point (private communication).

However, many other Americans believe that nothing the Branch Davidians did, or were accused of doing, justified either the February 28 or April 19, 1993 assaults against them. Representative Harold Volkmer charged the initial attack on the Branch Davidians was part of a pattern of "Gestapo-like tactics" at the bureau. "I fail to see the crimes committed by those in the Davidian compound that called for the extreme action of BATF on Feb. 28 and the tragic final assault." [79][4]

Representative John Conyers branded the April 19th gas and tank attack a "military operation" and called it a "profound disgrace to law enforcement in the United States." He told Janet Reno, "you did the right thing by offering to resign. I'd like you to know that there is at least one member of Congress who is not going to rationalize the innocent deaths of two dozen children." [80][5]

As the trial of eleven surviving Branch Davidians for "conspiracy to murder federal officers" proceeds in San Antonio, Texas, the public may finally learn the disturbing and even shocking truth about U.S. government violations of rights, excessive use of force and coverup. There is a possibility that the jury will be so disgusted by trial revelations it will acquit most of the Branch Davidians on most or all charges.

The Committee for Waco Justice is a group of individuals committed to ensuring that the public does learn the truth about violations of rights, use of excessive force and coverup of wrongdoing in the Bureau of Alcohol, Tobacco, and Firearms' (BATF) initial raid upon, and the Federal Bureau of Investigation's (FBI) destruction of, the Branch Davidians. Our report--"The Massacre of the Branch Davidians"--is a systematic presentation of evidence of government agents' and officials' misconduct and crimes. Our sources include the Treasury Department's September 30, 1993 report, the Justice Department's October 8, 1993 report, Senate and House of Representatives hearings, news reports and other published materials, news video tapes, conference audio tapes and personal interviews. Our report:

- * examines similar government actions towards dissident groups and individuals and the government's growing reliance on private spies and "cult busters";

- * reviews the history of the Branch Davidians and the questionable evidence used to support non-weapons allegations against David Koresh;

- * outlines the most important current evidence of BATF and FBI violations of rights, excessive use of force and the ongoing coverup, a coverup in which both the Treasury and Justice Departments are participating;

- * describes the charges facing the eleven Branch Davidians, their expected defenses, and civil suits against the government by surviving Branch Davidians and families of the deceased;

- * delineates an inevitable rise in the number and variety of dissident religious and political groups as we approach the "magic" year 2000;

* offers recommendations to ensure that local, state and federal governments end violations of Americans' rights.

Despite the Committee's limited resources, and our primary reliance on public sources, we have made some important and startling findings which seem to be evidence of official misconduct and crimes against the Branch Davidians. Our most disturbing findings are:

* After BATF could find no evidence that weapons were purchased illegally, it based its "probable cause" on biased information about "intent" from "cult busters" committed to destroying the Branch Davidians and former members influenced by them and on words and deeds protected by the First Amendment.

* BATF ignored David Koresh's past cooperation with more serious investigations as well as Koresh's 1992 invitations to BATF agents and the local Sheriff's Department to inspect his guns. BATF also engaged in flagrant "undercover" surveillance which may have convinced the Branch Davidians that the government was preparing to destroy them and that armed defense was their only recourse.

* BATF decided to conduct a paramilitary raid because of the overly-aggressive mentality of raid planners, biased information from cult busters, shoddy intelligence, a need to bolster BATF's image, and the desire to punish a BATF critic.

* BATF knew former tenants probably had set up a methamphetamine lab at Mount Carmel and that Koresh had dismantled it years before; nevertheless, they used that information to get free support from the Texas National Guard.

* Although the magistrate who signed the warrants did not designate this a "no knock" raid, BATF had no plan to serve the warrant peacefully and even expected a shootout! BATF may have shot first and did fire indiscriminately. BATF raid commanders in helicopters may have fired from them. Attorney General Janet Reno has not completed an investigation into 911 tapes whose time sequence was re-ordered, possibly to discredit Davidians' claims helicopters were firing at them.

* The savage BATF assault may have convinced some wounded Branch Davidians the government meant to slaughter them, so they committed suicide or had themselves shot.

* After the raid, BATF intimidated two important witnesses who could attest to the Branch Davidians' innocence. They tricked one into accepting "protective custody" and then kept him away from the press and the FBI; they brushed off another's offer of help and then put him on the "armed and dangerous" list when he left town.

* The Justice Department knowingly violated its own interpretation of the posse comitatus law by using tanks against the Branch Davidians, including in the final, fatal assault; it also misled President Clinton about their use.

* The FBI controlled, intimidated and lied to the press and the media.

* Richard M. Rogers, the FBI Hostage Rescue Team Commander at Waco, repeatedly sabotaged negotiations by pressuring the siege commander to use harassment tactics and later CS gas against the Branch Davidians. Rogers is now under investigation and may be indicted for his overly aggressive tactics in the 1992 standoff with Randy Weaver in Idaho.

The FBI's impatience to end the standoff may have been related to their fear the upcoming Weaver trial would bring out facts about FBI misconduct in that case.

* The FBI and Justice Department covered up its reliance on "cult busters"--including a long-time FBI advisor-- because of criticism of their use, because one advisor was indicted for "unlawful imprisonment," and because of a lawsuit against the FBI and Attorney General Janet Reno regarding the FBI's use of the term "cult."

* The FBI convinced Attorney General Reno to approve their plan to gas and demolish Mount Carmel by evidently withholding from her David Koresh's very credible April 14th letter promising to surrender, even as they showed her his defiant April 9th and 10th letters. Evidently this letter also was withheld from the press and not mentioned to Justice Department outside experts during FBI briefings. It was included in the Justice Department report, but mislabeled as a mere "request."

* The FBI convinced Attorney General Reno that April 19th would not be "D-Day"--that they would proceed with a safe operation and continue to negotiate. However, they obtained authority to "return fire" and speed up demolition of Mount Carmel and evidently never informed Reno of their expectations there would be casualties.

Despite FBI and Justice Department statements to the contrary, FBI agents were seen outside their tanks near the building before the fire. Under the FBI rules of engagement they had the authority to shoot Branch Davidians, may have done so, and now may be covering up their acts.

The Justice Department and FBI are refusing to admit that there was an order to begin the demolition of Mount Carmel right before noon and have not revealed who--FBI ground commanders or FBI or Justice officials--gave that order.

Nearly simultaneous FBI tank attacks from three sides trapped Branch Davidians in the building and started some or all of the fires from which most could not escape. There was no mass suicide; there were desperate suicides by a few trapped victims of the fire. If two or three despairing Branch Davidians did light fires, as the government claims, it was because government assaults had convinced them martyrdom was preferable to capture and enslavement by evil authorities.

During the April 19th fire, FBI tanks destroyed important evidence by bulldozing burning walls into the rubble. BATF and FBI agents were all over the "crime scene" during Texas Rangers investigation and may have destroyed or even fabricated evidence.

* The BATF-influenced chief fire investigator issued a biased fire report blaming the Branch Davidians for their own deaths. The government then bulldozed the ruins of Mount Carmel before defense attorneys could send in an independent fire investigator.

The Treasury Department and Justice Department reviews of the BATF investigation and raid and the FBI siege and final assault contain dubious assertions and leave too many questions unanswered. Neither "review team" was authorized to take under oath testimony of BATF and FBI agents and Treasury and Justice Department officials. Many consider these reviews and reports to be little more than systematic coverups of official crimes.

* Despite Treasury Department report findings that BATF's February 28,

1993 raid commanders lied repeatedly to investigators and their superiors, and that BATF officials covered up these lies, no one has been prosecuted.

* The Justice Department's review team is tainted by conflicts of interest regarding Deputy Attorney General Philip B. Heymann, and reviewers Edward S.G. Dennis and Willie Williams.

* There are suspicions that cronyism among Arkansans involved in Waco decision-making--President Clinton, Webster Hubbell, Bruce Lindsay and the late Vince Foster--might extend to covering up any errors or crimes related to the massacre of the Branch Davidians.

* The trial of the eleven Branch Davidians is bringing out important evidence of coverup such as missing vital evidence, changing statements by several BATF agents, and evidence that BATF agents were wounded by friendly fire--not to mention prosecutorial misconduct in the form of withholding evidence favorable to the defense.

[81]JUSTICE MUST BE DONE

If our small committee could discover so much damning evidence of wrongdoing, we believe an Independent Counsel appointed by the Attorney General could discover much, much more. The Independent Counsel would be empowered to identify and prosecute government agents and officials responsible for official misconduct, violations of rights, and excessive use of force which resulted in the deaths of over 86 people, and for any and all related crimes. She or he would be empowered to investigate the actions of Treasury Department and Justice Department officials, BATF and FBI officials and agents, and officials and agents of any other departments, agencies and law enforcement involved in the incident. She or he could also investigate White House officials and employees. She or he would have full power to subpoena witnesses to give testimony under oath and to grant immunity in exchange for evidence of criminal wrongdoing-- power which neither the Treasury nor the Justice Department's "review teams" had.

The Committee for Waco Justice believes the facts already available provide compelling evidence that BATF and the FBI, through a combination of negligence and arrogance bordering on intentionality, did indeed massacre the Branch Davidians. No matter how the April 19th fires started, those who gassed Mount Carmel Center and rammed it with military tanks ultimately are responsible. This would be the largest massacre of civilians by federal agents on U.S. soil since the slaughter of 300 Native Americans--also mostly women and children--at Wounded Knee in 1890. Americans must ensure that law enforcement agents never again initiate or participate in another such massacre.

[82]PAST WACOS: GOVERNMENT'S "HISTORIC INTEREST IN BREAKING UP ARMED GROUPS"

The word "Waco" has become synonymous with two opposing scenarios. To many Americans--and especially authorities-- it means crazed religious fanatics arming themselves to make war on the U.S. government and committing mass suicide when they lose the war. However, to other Americans "Waco" means a questionable, clearly illegitimate or even vicious and murderous government destruction of a dissident group.

Appendix G of the Treasury Department report, "A Brief History of Federal Firearms Enforcement," states: "The raid by ATF agents on the Branch Davidian compound resulted from its enforcement of contemporary

federal firearms laws. In a larger sense, however, the raid fit within an historic, well-established and well-defended government interest in prohibiting and breaking up all organized groups that sought to arm or fortify themselves. . .>>>From its earliest formation, the federal government has actively suppressed any effort by disgruntled or rebellious citizens to coalesce into an armed group, however small the group, petty its complaint, or grandiose its ambition. The collection of large arsenals by organized groups lent itself, ultimately, to the violent use of those weapons against the government itself or portions of its citizenry. Indeed, federal agents who tried to disband the groups frequently became the targets." (TDR:Appendix G:7)

Footnote [83][6] >>>From the Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms Investigation of Vernon Wayne Howell also known as David Koresh, September, 1993. All references from the report will be included within the text, with the page number after the colon, e.g., (TDR:#).

The report's history does not mention that both a federal statute--Firearms Owners' Protection Act of 1986, Sec. 21--and a judicial decision--United States vs. Anders, 885 F.2d 1248 (5th Cir. 1989) --hold that there is nothing per se wrong with the ownership of large numbers of legal arms. Obviously, the decision and the statute have not reined in BATF.

Appendix G describes the following as examples of the federal government's most successful tax, alcohol and firearm law enforcement efforts: suppression of angry farmers facing foreclosure in Shay's Rebellion (1786); enforcement of tax and firearms laws during the Whiskey Rebellion (1794); enforcement of a tax on houses during Fries Rebellion (1799); suppression of those guilty of "fugitive slave rescues" during the 1850s; thwarting of John Brown's attempt to steal firearms from Harpers Ferry and distribute them to slaves; suppression of the Ku Klux Klan during the 1870s; suppression of old west outlaws during the 1880s; suppression of "violent" union organizing during the 1890s; enforcement of the 1918-1933 prohibition of alcohol; and enforcement of the National Firearms Act of 1934 (a tax on guns) prompted by the Prohibition-related rise in crime and use of firearms. In 1972 the Treasury Department created the Bureau of Alcohol, Tobacco and Firearms to enforce gun, explosives and arson-related laws.

Appendix G notes that "In recent times, the federal government has shown itself even less patient with armed groups than it had historically. Radical extremists of both the Right and the Left have been pursued aggressively once they began breaking the law." (TDR:Appendix G:11.) The appendix lists the following triumphs: destruction of the Symbionese Liberation Army in a gun battle and house fire that killed all members; pursuit and capture Gordon Kahl, a tax protester who killed a police officer, in a gun battle and house fire which killed him; pursuit and capture of bank-robber and assassin Robert Matthews, leader of "The Order," in a gun battle and house fire which killed him; three-day siege of the heavily armed, 80-member Covenant of the Sword and Arm of the Lord religious group. The appendix closes with the line, "The raid on the Branch Davidian compound occurred in the context of that historical background." (TDR:Appendix G:4) Evidently, the Branch Davidians' fiery deaths fit well within that "historical background" as well. (Local Philadelphia police, not federal agents, were responsible for the 1985 fire that killed 11 members of the MOVE group and destroyed two city blocks.)

Tony Cooper, a law enforcement consultant on anti- terrorism and professor of negotiations and conflict resolution at the University of Texas at Dallas, describes "the formation of a curious crusading mentality among certain law enforcement agencies to stamp out what

they see as a threat to government generally. It's an exaggerated concern that they are facing a nationwide conspiracy and that somehow this will get out of control unless it is stamped out at a very early stage." [84][7]

In its attempt to "stamp out" out fundamentalist Muslim "conspiracies," the FBI may have allowed its hired informant to build and plant the bomb that exploded at the World Trade Center two days before the BATF raid on the Branch Davidians. In tapes he secretly recorded, the informant, former Egyptian army officer Emad Salem, allegedly tells FBI agent John Anticey that his high April expenses were due to the costs of his building the World Trade Center bomb. [85][8] The exact transcript reads: "We was start already building the bomb, which is went off in the World Trade Center. It was built, uh, uh, uh, supervising, supervision from the Bureau and the DA and we was all informed about it. . . And we know that the bomb start to be built. By who? By your confidential informant." Defense attorneys say Salem drove the van with the bomb in it to the Trade Center garage and then stayed nearby until the explosion. [86][9] (Ironically, in his April 20, 1993, news conference defending the FBI's assault on the Branch Davidians, President Clinton boasted, "This is the same FBI that found the people that bombed the World Trade Center in lickety-split, record time." [87][10])

During the April 28, 1993, House Judiciary Committee hearing on Waco, then-BATF Director Stephen Higgins defended the tactics used at Waco by stating, "In the 18 months prior to the Branch Davidian incident, ATF Special Response Teams had carried out 341 actual activations to high risk situations," including "diverse sects and survivalists." [88][11] However, many believe these figures are merely evidence that BATF is out of control. In April, 1991, 23 BATF agents raided the home of Del Knudson, endangering his wife and two young children, but found only legal weapons and parts. In December, 1991, BATF agents, with two television crews in tow, raided John Lawmaster's home, broke up furniture, doors, walls, and gun and filing cabinets. They found nothing illegal and left without shutting the door, leaving guns and ammunition strewn about the unsecured house. At the request of the government, the court sealed the affidavit that led to the search warrant and the break-in and denied Lawmaster's request for its release. Lawmaster appealed to the U.S. Court of Appeals. BATF refused to pay damages. [89][12] In 1991, BATF agents also entrapped Randy Weaver, an act which eventually led to the FBI's fatal "standoff" described in the following section. On February 5, 1993, the BATF ransacked the home of a Portland, Oregon black woman, and terrorized her children for several hours in a case of mistaken identity. [90][13]

[91]BATF AND FBI CRIMES AGAINST RANDY WEAVER

The Justice Department and FBI are now investigating possible criminal misconduct on the part of FBI agents and officials in the killing of Idaho white separatist Randy Weaver's wife and son. Significantly, these are many of the same agents and officials who were in charge of the FBI's actions against the Branch Davidians: former FBI Director William Sessions, former FBI Deputy Director Floyd I. Clarke, Assistant Director for the Criminal Investigative Division Larry Potts and Hostage Rescue Team (HRT) Commander Richard M. Rogers. This account includes the most recent revelations about their irresponsible behavior, much of which was repeated in Waco. [92][14]

Randy Weaver had retreated to rural Idaho with his wife, four children and a family friend, Kevin Harris. In 1990 a BATF undercover agent

entrapped Weaver into selling him two illegally sawed-off shotguns for \$300. Weaver alleges BATF charged him after he refused to inform on other white separatists. The government then gave him the wrong date for a court hearing, March 20 instead of February 20, 1991.

Rather than take immediate action when Weaver failed to appear, U.S. Marshals began almost 18 months of surveillance. Finally, on August 22, 1992, six Marshals, one equipped with an assault rifle with a silencer, approached Weaver's cabin and threw rocks at his dog in an effort to lure Weaver closer so they could arrest him. When the agents shot the dog, Harris and Weaver's 14-year-old son Samuel, not knowing who the attackers were, ran towards them shooting. Their shots killed U.S. Marshal William Degan. Samuel was shot in the back and killed as he retreated. The armed Weaver and Harris then refused to surrender to authorities.

The National Guard and the FBI Hostage Rescue Team were called in. (The Hostage Rescue Team's motto is "To Save Lives.") According to court records, the U.S. Marshals falsely told the FBI that Weaver himself had ambushed them and that the Weavers and Harris would kill anyone who approached them. U.S. Marshals never did tell the FBI that Samuel had been killed by a Deputy Marshal. They did tell them Mrs. Weaver was a fanatic capable of killing herself and her own children as an end to the siege. However, they provided no evidence of this to FBI agents, who took the Marshals on their word. FBI agents admit they actually believed the Weavers had killed Samuel.

Finally, U.S. Marshals never told the FBI that they knew that when the adults went outside the cabin they always carried weapons. FBI HRT Commander Richard M. Rogers authorized "rules of engagement" which gave snipers the go-ahead to shoot any adult carrying a weapon outside the cabin. (The standard FBI rules of engagement are "Agents are not to use deadly force against any person except as necessary in self-defense or the defense of another, when they have reason to believe they or another are in danger of death or grievous bodily harm. Whenever feasible, verbal warnings should be given before deadly force is applied." [93][15]) However, the FBI never advised the Weavers or Harris they would be in jeopardy if the FBI saw them armed on the property.

The day after the first shootings, Harris and Weaver, carrying their guns, left the cabin to visit Samuel's body. FBI sniper Lou Horiuchi first shot Weaver in the shoulder and then tried to shoot Harris. However, he accidentally shot Vicki Weaver as she stood in the doorway of their cabin holding her baby. She died instantly, dropping the baby to the ground. Harris was wounded by shrapnel. During the standoff the Rogers Hostage Rescue Team used psychological warfare techniques. Court records show that the FBI taunted the Weavers after Vicki Weaver's death, calling out over their loudspeakers, "Good morning, Mrs. Weaver. We had pancakes for breakfast. What did you have?" [94][16]

Weaver and Harris surrendered nine days later, after the FBI allowed Populist Party presidential candidate Bo Gritz to serve as a "third party" negotiator. They were charged with conspiracy to murder federal officers. Their trial before a federal jury and U.S. District Judge Edward Lodge began five days before the April 19th fire that killed 75 or more Branch Davidians.

Most of the above disturbing information came to light during the trial. It was also revealed that FBI agents had fabricated evidence (staged critical photographs), failed to provide the defense with information they were legally obligated to give it, and delayed in producing requested information and evidence. Weaver's defense

attorney was Gary Spence, who had won notable trial victories for Karen Silkwood's children and Imelda Marcos. Spence did not call any witnesses or present a defense, but simply told jurors the government had failed to prove its case.

In July, 1993, the jury acquitted Weaver and Harris for Degan's murder, saying Harris had acted in self-defense. The jury also rejected charges that the two men conspired to provoke a confrontation with federal officers. Weaver was convicted of failing to appear for the weapons charges trial and was sentenced to 18 months in prison, with credit for time already served. Spence told reporters, "A jury today has said that you can't kill somebody just because you wear badges and then cover up those homicides by prosecuting the innocent." Juror Janet Schmierer of Boise, Idaho said, "I think they built their whole scenario out of how they perceived someone else should be living their lives, and if someone believed differently. . . they must be abnormal." Spence also said, "federal law enforcement agents should be indicted for murder in the deaths of Mrs. Weaver and Samuel." [95][17] In November, 1993, Judge Edward Lodge rebuked the FBI, saying its behavior in fabricating evidence and delaying presentation of crucial evidence "served to obstruct the administration of justice." He asserted, "the Government, acting through the FBI, evidenced a callous disregard for the rights of the defendants and the interests of justice."

According to a November 25, 1993, New York Times article, the Justice Department inquiry, led by Deputy Attorney General Philip B. Heymann, is "focusing on whether officials misjudged the danger the agents faced and knowingly violated the agency's limits on the use of deadly force by killing Mrs. Weaver. The inquiry is also examining whether officials failed to consider less aggressive tactics and later closed ranks to avoid scrutiny of their actions." Justice investigators are warning "top managers, agents, prosecutors and former officials that they could face civil or criminal charges, including obstruction of justice and violations of civil rights law." Further, "some FBI officials said they also feared that a separate investigation by a state prosecutor in Boundary County, Idaho, where the incident took place, could lead to homicide charges against FBI agents."

Some members of the Hostage Rescue Team, "including Richard M. Rogers, its commander, have refused to cooperate with investigators." Other agents have criticized Rogers for being overly aggressive and failing to consider negotiations. Larry Potts, the senior FBI official who would have had to approve the new rules of engagement, told FBI investigators he does not remember giving Rogers a clear go-ahead to change them. [96][18] According to the Washington Times, in December, 1993, FBI Director Louis J. Freeh told FBI agents that indictments against some FBI agents were a "virtual certainty." [97][19]

[98] GOVERNMENT RELIANCE ON "PRIVATE SPIES" AND "CULT BUSTERS"

Because of government spying upon and disruption of peaceful political groups during the 1960s and 1970s, the Justice Department set guidelines prohibiting investigations of groups "based solely on activities protected by the First Amendment or on the lawful exercise of any other rights secured by the constitution or laws of the United States." [99][20] As an agency of the Treasury Department, BATF does not work under such restrictions. Both agencies are free to investigate groups suspected of engaging in criminal activity.

Once an investigation is underway, most government agencies, including BATF and the FBI, seem willing to receive information from such groups

as the Anti-Defamation League of B'nai B'rith (ADL) and the Cult Awareness Network (CAN). These groups, and others like them, clearly have their own agendas. They keep copious files of biased and prejudicial information on private individuals and organizations and share these with law enforcement.

The Anti-Defamation League keeps files on Arab- American, Jewish peace, anti-apartheid, and other human and civil rights groups. A year-long investigation by the San Francisco District Attorney found that the ADL had infiltrated groups, stolen membership lists and other private documents, and swapped files with police, sometimes illegally. However, the ADL escaped prosecution. "In an unusual procedure, (District Attorney) Smith filed a civil suit accusing the ADL and (ADL investigator) Bullock of illegally possessing confidential documents, then promptly accepted a settlement that contained no admission of wrongdoing." Shortly after this, 19 individuals filed a suit seeking damages for 1,100 people who allegedly were the targets of illegal surveillance and seeking court orders against such surveillance. [100][21] The government's lenience towards ADL suggests it does not frown on ADL's spying activities.

The ADL supplied information about the Branch Davidians to federal authorities. In a front page article about the ADL, Herb Brin, publisher of Heritage, which serves the Los Angeles Jewish community, wrote: "U.S. and Texas authorities have precise documentation (from ADL, of course) on the Branch Davidian cult in Waco and how it operated in the past." [101][22]

The Cult Awareness Network (CAN) actively urges the press, Congress and law enforcement to act against any non- mainstream religious, psychological or even political movement which it describes as a "cult." After interviewing CAN's executive director Cynthia Kisser, a reporter wrote: "no one knows how many destructive cults and sects exist in the United States. Kisser's binder holds 1,500 names gleaned from newspaper clippings, court documents and thousands of calls to the network's hotline. Some of the groups have legitimate purposes, Kisser says. But her group's efforts show that most, despite wildly diverse beliefs, share stunningly similar patterns of mind control, group domination, exploitation and physical and mental abuse." [102][23] CAN critics point out that so-called "mind control" techniques are not much different than the techniques used in education and socialization efforts used by all schools, churches, ideologies and philosophies.

According to CAN critic Dr. Gordon Melton of the Institute for the Study of Religion in Santa Barbara, California, CAN has used a number of means to try to destroy small religious groups: they unsuccessfully tried to expand "conservatorship" to allow families to remove members from "cults"; they unsuccessfully tried to have laws passed against "cults"; they unsuccessfully sued the American Psychological Association for rejecting their views on "brainwashing." However, they have found one successful method of disrupting groups: false anonymous charges of child abuse. Anonymous reports are legal under current law. [103][24]

Priscilla Coates, former executive director of CAN, told reporters, "I know how these types of groups work and the children are always abused." [104][25] CAN has been on a crusade against the Christian religious group The Children of God, known in the United States as "The Family." CAN alleges the group practices indiscriminate sex, including with children. [105][26] Many Family members accuse CAN of making false child abuse complaints which have resulted in dozens of arrests in at least 10 countries. Most of the charges are quickly dropped and there have been no convictions. The Family has demanded a

Congressional investigation of CAN. [106][27]

The Cult Awareness Network's other successful approach is referring relatives of group members to "deprogrammers" who charge thousands of dollars for their services and, according to a former national director of CAN's predecessor, the Citizens Freedom Foundation, "kick back" some of the money to CAN. [107][28] Deprogramming often includes kidnapping individuals, subjecting them to sleep and food deprivation, ridicule and humiliation, and even physical abuse and restraint until they promise to leave the alleged cult. Because deprogrammers usually involve family members in these kidnappings and deprogrammings, victims rarely press charges. However, in the last few years 5 deprogrammers have been prosecuted for kidnapping or "unlawful imprisonment." One such deprogrammer is Rick Ross, a convicted jewel thief, who has boasted of more than 200 "deprogrammings." CAN executive director Cynthia Kisser has praised him as being "among the half dozen best deprogrammers in the country." In the summer of 1993 Rick Ross was indicted in Washington state for unlawful imprisonment.

Nancy Ammerman, a Visiting Scholar at Princeton University's Center for the Study of American Religion, was one of the outside experts assigned by the Justice Department to evaluate BATF and FBI's handling of the Branch Davidians. She was particularly critical of Rick Ross and the Cult Awareness Network. "Although these people often call themselves 'cult experts,' they are certainly not recognized as such by the academic community. The activities of the CAN are seen by the National Council of Churches (among others) as a danger to religious liberty, and deprogramming tactics have been increasingly found to be outside the law. . . Mr. Rick Ross, who often works in conjunction with the Cult Awareness Network (CAN), has been quoted as saying he was 'consulted' by the BATF. . . The Network and Mr. Ross have a direct ideological (and financial) interest in arousing suspicion and antagonism against what they call 'cults'. . . It seem clear that people within the 'anti-cult' community had targeted the Branch Davidians for attention." (JDR:Ammerman:1)

Footnote [108][29] All references from the Justice Department report will be included within the text, with the page number after the colon. The report consisted of 4 books and an unbound paper. (JDR:#) refers to the largest book, the factual report. All other references will include the name of each specific contributor, e.g., (JDR:Dennis:#) or (JDR:Stone:#).

Nancy Ammerman compared Waco and Jonestown: "There, too, an exceptionally volatile religious group was pushed over the edge, inadvertently, by the actions of government agencies pushed forward by 'concerned families.'" (JDR:Ammerman:8) What she may not have realized is that CAN's President is Patricia Ryan, daughter of Congressman Leo J. Ryan. It was he who threatened and hounded Jim Jones and his Peoples' Temple members until they murdered him and committed mass suicide in Guyana in 1978. Carrying on what seems to have become a family tradition, on April 8, 1993, Patricia Ryan told the Houston Chronicle, "Officials should use whatever means necessary to arrest Koresh, including lethal force." [109][30]

Ross definitely deprogrammed one (and possibly more) of the Branch Davidians who fed questionable but damaging evidence to BATF. He also provided negative information to the Waco Herald-Tribune for its February, 1993, series on the Branch Davidians. The paper quotes Ross declaring, "The group is without a doubt, without any doubt whatsoever, a highly destructive, manipulative cult. . . I would liken the group to Jim Jones." The authors write, "Ross said he believes Howell (Koresh) is prone to violence. . . Speaking out and exposing Howell might bring in the authorities or in some way help those 'being

held in that compound through a kind of psychological, emotional slavery and servitude.'" Ross told the Houston Chronicle that Koresh is "your stock cult leader. They're all the same. Meet one and you've met them all. They're deeply disturbed, have a borderline personality and lack any type of conscience. . . No one willingly enters into a relationship like this. So you're talking about deception and manipulation (by the leader), people being coached in ever so slight increments, pulled in deeper and deeper without knowing where it's going or seeing the total picture." [110][31]

CAN representatives made numerous television and radio appearances during the siege. Ross bragged on the "Up to the Minute" public television program that he "consulted with ATF agents on the Waco sect and told them about the guns in the compound." On April 19th he told the "Today Show," "I was a consultant offering ideas, input that was filtered by their team and used when they felt it was appropriate." The Justice Department report mentions a Rick Ross television appearance during the siege where he declared he hoped Koresh would be a coward and surrender rather than end up as a corpse. (JDR:167) After the April 19th fire, CAN associate Louis West said on a MacNeil/Lehrer Newshour broadcast that the FBI "knew they were dealing with a psychopath. Nobody is more dangerous or unpredictable than a psychopath in a trap."

After the fire, CAN "counselor" Brett Bates tried to arrange contacts with survivors by meeting with their families. He told the N.Y. Daily News, "Before they can become productive witnesses in the prosecution, they have to realize they were victims of mind control." Columnist Alexander Cockburn wrote, "the deprogrammers are demanding that they be allowed to exercise their dark arts on the burned Davidian survivors so that they testify correctly and desist from maintaining--as they have--that no mass suicide was under way. The FBI says 'this is worth considering,' but the decision is up to the U.S. attorney." [111][32] The only Branch Davidian to turn state's evidence is Katherine Schroeder who was confined in a mental institution after leaving Mount Carmel in March, 1993 (private communication.) It is unknown if she was "deprogrammed."

After the April 19th fire Methodist Minister Joseph Bettis wrote Attorney General Reno, "from the beginning, members of the Cult Awareness Network have been involved in this tragedy. This organization is widely known for its use of fear to foster religious bigotry. The reliance of federal agents on information supplied by these people, as well as the whole record of federal activity deserves your careful investigation and public disclosure. . . Cult bashing must end, and you must take the lead." Larry Shinn, a vice president of Bucknell University wrote to the chair of the House Subcommittee on Civil and Constitutional Rights, "media, legal institutions, and law-makers too often rely on the word of self-styled cult experts like C.A.N. whose overly negative agenda often slides into purely anti-religious attack." And in early May, a coalition of 16 religious and civil liberties organizations, including the American Civil Liberties Union, the American Conference on Religious Movements, Americans United for Separation of Church and State, the Episcopal Church, the General Conference of Seventh-Day Adventists, the National Association of Evangelicals, the National Council of Churches of Christ and the Union of American Hebrew Congregations issued a statement which read in part, "We are shocked and saddened by the recent events in Waco. . . Under the religious liberty provision of the First Amendment, the government has no business declaring what is orthodox or heretical, or what is a true or false religion. It should steer clear of inflammatory and misleading labels. History teaches that today's 'cults' may be tomorrow's mainstream religions." President Clinton seems to have jumped on the anti-cult bandwagon. On April 23, 1993,

Clinton said, in what some see as a thinly veiled threat, "I hope . . . that others who will be tempted to join cults and become involved with people like Koresh will be deterred by the horrible scenes they have seen. . . There is, unfortunately, a rise in this sort of fanaticism all over the world. And we may have to confront it again."

Attorney General Janet Reno also has expressed anti-cult sentiments. During the April 28, 1993, House Judiciary Committee hearing, Representative William Hughes advised Janet Reno to consult groups like the Cult Awareness Network for advice on "mind control." Reno replied that she was concerned about the negative affect of cults on children, that "if a child is in a cult situation for any length of time," he or she might experience "permanent damage."

BATF is still investigating so-called cults. In November, 1993, acting director John W. Magaw stated that he was determined that other religious "cults" not develop into "armed compounds." He said, "They're out there. They don't yet have the kind of weaponry that we saw in Waco. . . but they will develop if society allows them to." Magaw said BATF is keeping tabs on "cult-like organizations" in "three or four places around the country. . . We're trying to monitor way early in the game." [112][33]

In his November 22, 1993, American Academy of Religion presentation, Dr. Melton condemned the government's calling on groups like the Cult Awareness Network for information on "cults." He compared it to the government calling on Nazis for information on Jews or Ku Klux Klan members for information on African-Americans.

At least one group is fighting FBI use of the "cult" term and its reliance on private spies. In May, 1993, the New Alliance Party, its presidential candidate Dr. Lenora Fulani, and other members of the party sued the Federal Bureau of Investigation, Janet Reno, and other officials. Referring to "cult," the party is "seeking a declaratory judgment that defendants' description as the predicate or justification for investigative activities, use of force, criminal prosecution, or governmental regulation is a violation of the First, Fourth and Fifth Amendments of the Constitution of the United States." The suit also claims the FBI excused its "virtual liquidation of the" Branch Davidians as "appropriate law enforcement action to take against a 'cult'." And the suit attacks the FBI's having "consulted with one or more persons associated with a Chicago-based organization, the Cult Awareness Network."

[113]THE HISTORY OF THE BRANCH DAVIDIANS

To provide a fuller perspective on government action against the Branch Davidians, we present a history of the group and analyze former members' most damning non-weapon related allegations. The Branch Davidians are an offshoot of the Seventh Day Adventist Church. Like the church, they believe in the "advent" or "Second Coming" of Jesus Christ, complete with the end of the world in a fiery apocalypse, the death of all sinners and the salvation of true believers. [114][34] In 1935 Seventh Day Adventist Victor Houtoff declared himself a prophet, formed the Shepherd's Rod Church and established the first Mount Carmel Center in Waco. In 1955 Houtoff died and his wife Florence took over and established the current Mount Carmel further outside Waco. When the Second Coming of Christ did not occur on April 22, 1959, as she predicted, the group split. The largest contingent followed another "prophet," Ben Roden, who changed the Church's name to the Branch Davidians.

In 1978 Ben Roden died and his wife Lois Roden, a woman well-known in evangelical circles because of her pronouncement that the Holy Spirit was female, became the new Branch Davidian prophet. However, she soon found herself in power struggles with her son George Roden, whom most Branch Davidians considered too poorly versed in Scriptures and too erratic to lead the group. In 1981, after being "disfellowed" from the Seventh Day Adventist Church for proclaiming himself a prophet, rock musician and handyman Vernon Howell joined the Branch Davidians. His knowledge of Scripture and personable manner quickly gained him the confidence of Lois Roden and many Branch Davidians. It also earned him the enmity of George Roden, who saw Howell as his prime rival for Branch Davidian leader and prophet. In 1984 Howell married 14-year-old Rachel Jones. The battle between Roden and Howell escalated until finally, in 1985, a gun-toting George Roden drove Howell and his followers out of Mount Carmel. They established a community in shacks and buses on property they purchased in Palestine, Texas.

Howell visited Israel in 1985 and studied the Bible with several rabbis. There he had, as he explained in a February 28, 1993, KRLD radio interview, "an encounter" or, as he told FBI negotiators, "a miraculous meeting with God," (TDR:43) which instructed him to study and fulfill the prophecies of the Seven Seals of the Book of Revelation.

The rivalry with the paranoid and gun-obsessed Roden heated up after Lois Roden's death. In late 1987 Roden dug up the coffin of a long-dead Branch Davidian and challenged Howell to raise her from the dead. Howell complained to authorities about "corpse abuse," but they demanded proof of a crime. When Howell and seven armed followers snuck onto the property to photograph the coffin, Roden caught them and a gunfight ensued. All eight were tried for attempted murder of Roden; seven were acquitted and Howell's trial ended in a hung jury.

By now George Roden had lost most of his followers, was in debt, and was renting out Mount Carmel's ramshackle houses, including to at least two drug traffickers. [115][35] After writing threatening letters to a Texas Supreme Court Justice, Roden was jailed for six months. Howell took this opportunity to encourage the county to put a lien on Mount Carmel for 16 years of unpaid taxes. Howell paid the taxes in 1989, thereby gaining control of Mount Carmel. By this time he also had full use of a follower's large house in LaVerne, California and travelled back and forth between the two locations. George Roden continued to threaten Howell and his followers. In 1989 Roden murdered a man with an ax and was incarcerated in a mental institution. Nevertheless, Branch Davidians feared he would return and attack them and therefore remained armed and alert. Roden did escape briefly in late 1993.

In early 1990 Vernon Howell legally changed his name to David (for King David) Koresh (Hebrew for Cyrus, the Persian king who freed the Jews from Babylon). Koresh collected even more followers, almost half of whom were of African, Hispanic or Asian descent. They all believed that he was a prophet--the "Lamb of God"--destined to unlock the secrets of the Seven Seals, show the way of repentance to society and thereby hasten the return of Jesus Christ. And they concurred with his view that he must create a "House of David" where his many wives would bear him children who would become the rulers of a purer new world.

During the siege Wayne Martin, a Harvard-educated African-American attorney, told negotiators his view of Koresh's importance. The Justice report describes it thusly: "America's political system was in decay and in conflict with God's law, and that Koresh had been chosen by God as 'the Lamb' to rule over his kingdom on earth. Martin claimed that America and the world were witnessing the birth of a new nation

founded on the Seven Seals." (JDR:41) Koresh asserted his prophetic greatness would inevitably attract evil authorities--the "Babylonians" or "Assyrians"-- who would try to crush him. If the Branch Davidians died defending Koresh's prophecies, they would be resurrected and return to conquer the Babylonians and rule the world.

Some have said that Koresh's first prophesizing the government would come to attack him and then collecting a lot of weapons--including allegedly illegal ones--just "invited" a government attack. They call it a "self- fulfilling prophecy." However, intelligent law enforcement should be able to deal with such situations without violence and without massive loss of innocent lives.

At the November 22, 1993, American Academy of Religion panel Jamaican Branch Davidian Janet McBean summarized David Koresh's appeal: "We are spiritual people. And we feel that God is watching what happens to this world. That's the reason why David protected his people and David felt the way he did. . .He felt compelled to give us the revelation as he did. And you can't blame him for that. And we studied it for ourselves. Now if you people study revelations and you see something different, then it is your responsibility to show it to the nation and show it to the world. . .David could speak to anyone on any level, from fourth grade to doctorate."

In 1989 Koresh began having troubles with breakaway members, especially Marc Breault, a follower from 1984 to 1989, who left and joined his wife in Australia. Breault claims that he became disillusioned because power had corrupted Koresh. He charged Koresh manipulated members through fear of hellfire, physically abused adults and children for minor infractions of capricious rules, seduced and impregnated young girls, took other men's wives, and demanded a willingness to die for him and his prophecies. [116][36]

Branch Davidians admit Koresh devised various "tests" of his followers' faith in God and his prophecies--from long study sessions, to communion twice a day, to food deprivation, to relinquishing wives to Koresh. However, they assert Breault's claims are exaggerations or lies and that he had challenged Koresh for control of the group. Breault replied to such charges in November, 1993. "If I was trying to take over the group I wouldn't have gone to the authorities. I wouldn't have tried to have justice done and had the group dismantled." [117][37] In his book Breault admits he "became a cult buster." For the next three years Breault devoted himself to the destruction of the Branch Davidians. Breault's often confused, contradictory or emotionally dishonest statements, in his book and elsewhere, reinforce the view that his motives were less than pure.

During 1990 Breault managed to convince a dozen or so discontented Branch Davidians in Australia, New Zealand, England and the United States to join his efforts. The Australians hired a private detective, Geoffrey Hossack, and signed affidavits alleging that Koresh was guilty of the statutory rape of two teenage girls, tax fraud, immigration violations, harboring weapons, child abuse, and exposing children to explicit talk about sex and violence. However, Hossack's visits to California and Texas local police, the Texas Department of Public Safety, the Immigration and Naturalization Service, and the Internal Revenue Service resulted in no action. Breault and his wife's visits to California and Waco in 1991 were also fruitless. He laments that McLennan County Sheriff Gene Barber said that "Breault's complaints, along with the others, stemmed from 'sour grapes.'" [118][38]

Linedecker writes in Massacre at Waco, Texas that in October, 1990, Robyn Bunds told Koresh she was leaving the group with their son. They

were in LaVerne, California at the time and he immediately sent the child back to Waco. She reported the child missing to LaVerne Police who gave Koresh 48 hours to bring the child back, which he did. Bunds also told police that Koresh was having sex with the underage Aisha Gyarfafas, but when they returned to investigate, Gyarfafas and Koresh had returned to Texas. [119][39] (Bunds also instigated an INS investigation of illegal immigrants, as Breault later did in Texas, but neither investigation led to government action.) In September, 1991, Jeannine Bunds, who like her daughter Robyn Bunds was Koresh's lover, left the Branch Davidians, claiming that she was upset that Koresh had asked her if she was "capable of killing her children." [120][40] Her husband Donald Bunds remained a member of the group.

Breault brought his allegations about Koresh and the Branch Davidians to the Australian television producers of "Current Affair." Reporter Martin King, who co-wrote Breault's book, visited Mount Carmel and interviewed Koresh in January of 1992. The program that eventually aired portrayed Koresh as a sex-crazed, gun-loving religious fanatic. Breault alleges Koresh saw it and was furious. Breault also informed Kiri Jewell's father, David Jewell, that Kiri was slated to become one of Koresh's wives. Jewell sued for custody and in January, 1992, Breault and other former Branch Davidians testified at the custody hearing in Michigan. Kiri's mother Sherri relinquished primary custody and promised to keep Kiri away from Koresh during visitations. (As we shall see, Jewell used his daughter in continuing attacks on the Branch Davidians.) Breault claims that the custody trial "panicked" Koresh and that he began planning for mass suicide over Easter weekend. [121][41] Breault and Jewell wrote Michigan Representative Frederick Upton with this allegation and Breault contacted the U.S. consulate in Melbourne which sent warning wires to Washington, D.C.

According to Linedecker, when Kiri Jewell told her father that two other young girls were also slated to become Koresh's brides, Jewell called the Texas Department of Human Services, which instigated the February-April, 1992, child abuse investigation. [122][42] Many of the Branch Davidian "defectors" eagerly cooperated with BATF and FBI investigators in 1992 and 1993.

That a number of former members were willing to make these allegations certainly suggests that there were problems with Koresh's leadership of the Branch Davidians. However, most of these individuals were influenced by either amateur cult buster Marc Breault or by professional cult busters Rick Ross and Patricia Coates, individuals committed to turning former members' genuine concerns or personal disappointments into action by law enforcement to destroy the alleged "cult."

[123]NON-WEAPONS ALLEGATIONS AGAINST DAVID KORESH

The allegations against Koresh have been so sensationalized that Koresh's alleged crimes seem to excuse the massacre of 86 or more Branch Davidians. The use of the most damning allegations to demonize the group necessitates that the allegations be explored. As we shall see, there is much truth in Dr. Gordon Melton's statement to the American Academy of Religion panel on the Branch Davidians: "As I examined the evidence of all the horrible things that Koresh had allegedly done, those horrible things began to melt away; they were unsubstantiated charges from witnesses who were biased and whose credibility was very low. The various accusations made had no foundation in fact. . .The question shifted to why did the government misuse its power in such a horrendous way?"

Child Abuse: The Justice Department report quotes just two 1990 affidavits by former members. Ian and Allison Manning alleged that Koresh insisted disobedient children be spanked with a wooden paddle and that such beatings sometimes severely bruised the children's bottoms. Michelle Tom alleged that Howell spanked her eight-month-old daughter for forty minutes because she would not sit on his lap and once threatened to kill a child if her mother gave her a pacifier. (JDR:224-226)

On February 27, 1992, Texas Department of Human Services social worker Joyce Sparks visited Mount Carmel with two other Human Services employees and two McLennan County Sheriff's deputies. They made two more visits and Koresh visited their offices. The case was closed on April 30, 1992. The Department offered this summary of the nine-week investigation: "None of the allegations could be verified. The children denied being abused in any way by adults in the compound. They denied any knowledge of other children being abused. The adults consistently denied participation in or knowledge of any abuse to children. Examinations of the children produced no indication of current or previous injuries." [124][43]

Dr. Bruce Perry, who interviewed children released from Mount Carmel during the siege, told the FBI on March 26, "these children had a number of strict behavioral and verbal prohibitions. Violations of these resulted in punishment, sometimes severe. The children, for example, expected to be hit when they spilled. The style of discipline often involved being beaten with what these children labeled 'the Helper'. . . some variation on a wooden spoon. Other forms of discipline included restrictions of food, sometimes for a day. . . ." (JDR:224) Steve Schneider's attorney Jack Zimmerman says that members never used the word "beatings" to describe the discipline. "The term they used was 'Christian discipline'. . . Discipline is not abuse." [125][44] At a May, 1993, press conference Perry confessed: "We can't say, 'Aha, physical abuse,' that's the crux of the issue. President Clinton and Janet Reno say 'child abuse.' Child protective services say, 'Well, we didn't see any.' . . . It's very complicated. It is an ongoing dilemma for what is the threshold for saying what is abuse." [126][45]

Sex with Minors: According to Daniel Wattenberg, Texas statutory rape laws are rather confusing, since the age of consent is 14 if the girl is promiscuous, but 17 if she is not. Nationwide, because so many young girls are having sex today, statutory rape laws frequently are not enforced; when they are, the sentences are usually light, assuming the girl fully consented. Hillary Rodham Clinton herself has criticized "the so-called status offenses," including for "sexual precociousness". [127][46] There are, of course, serious moral questions about the authenticity of a 14-year-old girl's consent to sex with an adult in any small community which considers sex with the leader to be a privilege. Government agencies found that Koresh's alleged victims were unwilling to cooperate and therefore they did not have enough evidence to convict Koresh of sex with minors. More importantly, civilized societies do not deal with sexual abuse of minors by attacking the perpetrator and his victims with heavily armed officers and then burning them to death when they refuse to surrender!

BATF agent Davy Aguilera's February 25, 1993 affidavit, which was used to secure search and arrest warrants against Koresh, states: "Mrs. (Jeannine) Bunds also told me that Howell had fathered at least fifteen (15) children from various women and young girls at the compound. Some of the girls who had babies fathered by Howell were as young as 12 years old. . . He also, according to Mrs. Bunds, has regular sexual relations with young girls there. The girls' ages are

from eleven (11) years old to adulthood." There are no other allegations he had children with girls that young.

Mrs. Bunds herself had made love to Koresh and told Newsweek that being chosen by Koresh was an eagerly sought honor. Koresh "wouldn't do it unless you wanted it. . . It wasn't about sex, but he was a very appealing, sexual person." Robyn Bunds, who first slept with Koresh when she was 17, said, "he's perfect, and he's going to father your children. What more can you ask for?" [128][47] According to 1990 affidavits by former members Ian and Allison Manning, and Marc Breault in his book, Koresh had bragged in Bible study about having sex with Michelle Jones and Aisha Gyarfas when they were 14. (JDR:219-221) However, even Marc Breault admitted that Aisha Gyarfas was "completely captivated by Vernon. She was like his little puppy dog tied to his leash. Aisha would do anything for Vernon." [129][48] Both girls, then ages 17 and 18, died with their children in the April 19th fire.

According to the Justice report, on February 22, 1993, a young girl told Texas Child Protective Services social worker Joyce Sparks "that on one occasion, when she was ten years old, her mother left her in a motel room with David Koresh. He was in bed and he told (her) to come over to him. She got into the bed. David had no pants on. He took off her panties and touched her and got on top of her. . . We talked about how she was feeling when this happened and she responded. . . scared. . . scared but privileged." (JDR:219) The Justice report concedes, "This evidence was insufficient to establish probable cause to indict or prove beyond a reasonable doubt to convict." (JDR:215) Evidently this is the same girl the Treasury Department report states was "unwilling to testify about what happened." (TDR:64) Similarly, the Washington Post reported that a LaVerne, California sergeant said that "one of the underage girls alleged as a victim was out of the cult, in her father's custody. . . she eventually confirmed she had sex with Koresh." The sergeant also admitted that while he'd garnered enough evidence to arrest Koresh, he doubted he had enough to convict him. [130][49]

Both reports and the sergeant are probably talking about the same young girl--who may be Kiri Jewell. According to Linedecker, in mid-February David and Kiri Jewell flew to Texas at the BATF's expense to speak to agents. [131][50] Kiri had been given over to her father's custody. And David Jewell was in constant contact with Marc Breault who, according to his book, had been working closely with a LaVerne, California sergeant. If this is indeed Kiri Jewell, one wonders if Mr. Jewell had joined the "cult busters" committed to destruction of the group and even was using his daughter in that effort. He even exposed her to public scrutiny by allowing her to appear on a March, 1993 "Donahue" show to talk about her experiences with the Branch Davidians.

Polygamy: In 1879, Reynolds vs. United States, the U.S. Supreme Court ruled that polygamy could not be protected by freedom of religion because it was "subversive of the public order" due to mobs rioting against hated polygamous Mormons. It is questionable whether criminalizing bigamy and polygamy would stand such a questionable court ruling today. Nevertheless, individuals are still prosecuted for bigamy and polygamy, be they liberals promoting plural marriage as a more fulfilling lifestyle or Christian, Mormon and Muslim fundamentalists, citing Scriptures. Further, those who practice "plural marriage" are open to the charge they are abusing children exposed to the lifestyle.

Koresh and Branch Davidian Paul Fatta have admitted publicly that Koresh was a polygamist. On February 28, 1993, Koresh told CNN, "There are a lot of children here. I've had a lot of babies these past two

years. It's true that I do have a lot of children and I do have a lot of wives." [132][51] On the same day he told KRLD radio, "I'm a polygamist. Which is not according to your laws, I understand that, but according to the laws of God."

Paul Fatta told reporters that Koresh did believe he had a right to take any consenting Branch Davidian woman as wife. "Mr. Fatta said that Mr. Koresh presented this behavior as a test of faith for the men who had lost their wives." [133][52] However, Branch Davidians deny that Koresh controlled the sex lives of the members. Ruth Riddle told an interviewer, "No. Not true. It was totally up to the couples what they wanted to do." She said she and her husband were planning to have children. [134][53] Stan Sylvia, who was forced to go through a parental training course to regain custody of his son, calls the allegations that his daughter Holly was really Koresh's child "government and tabloid lies." [135][54] Involuntary Servitude: Davy Aguilera's February 25, 1993 affidavit contends that Poia Vaega alleged that in June, 1991, Koresh and Stan Sylvia "falsely imprisoned" and physically and sexually abused Mrs. Vaega's sister, Doreen Saipaia, for three and a half months. Despite this allegation, Ms. Saipaia's relatives Neal and Margarida Vaega remained at Mount Carmel and died in the April 19th fire. Moreover, the FBI opened and closed a possibly-related investigation on "involuntary servitude" during 1992 but did not press charges. (TDR:Appendix D:4) Charges of "involuntary imprisonment" or "involuntary servitude" are frequently made by those influenced by cult busters. The fact that BATF and FBI failed to make this allegation to the media indicates even they questioned it.

Mass Suicide: As mentioned above, Marc Breault claims that Koresh planned mass suicide during Easter, 1992. In his book, he asserts that members began calling families to say goodbye, selling assets, and returning to Mount Carmel. Linedecker writes that David Jewell wrote Representative Upton that Steve Schneider had told his family goodbye and that a young woman fled the group with her children because of her fear of a slaughter. [136][55] Surviving Branch Davidians who heard these allegations at the time say those at Mount Carmel laughed them off as absurd (private communication). And Koresh told Waco Tribune-Herald reporter Mark England, "I'm not ready to die. It's all lies. Every year we've gathered for Passover. Every year. Look, the place is being built up. We're spending lots of money. A lot of people are putting time and effort in. . .I've got the water-well man coming in. I mean, two weeks in a row we're supposed to be committing suicide. I wish they'd get their story straight." [137][56]

The Treasury Department report states that a child had told a California police officer that she had been trained by Koresh and his advisers "to commit suicide in several different ways, including placing the barrel of a handgun in her mouth and pulling the trigger." (TDR:46) Edward Dennis identified this child as Kiri Jewell. (JDR:Dennis:37) (Reportedly, she said the same thing on the Donahue television show.) According to Edward Dennis, after the fire, former member Dana Okimoto alleged that "Koresh's biggest fear was someone would take his wives away and that he felt that rather than letting someone take his wife, the wife should kill herself and if she could not do so one of the 'Mighty Men' should do it, since this was one of their duties." (JDR:Dennis:34)

Despite the statements of some former members that the Branch Davidians might commit suicide, the FBI had collected statements from many more Branch Davidians that they would not. FBI spokesperson Bob Ricks said after the April 19th fire: "We went thought the world and interviewed former cult members, associates of cult members, the number that I last checked was 61 people. The vast bulk, the

substantial majority of those believed that they would not commit suicide." [138][57]

Propensity Towards Violence: During the siege, numerous neighbors and acquaintances of the Branch Davidians were interviewed. Most made statements like that of A.L. Dreyer, an 80-year-old farmer living near Mt. Carmel: "I've never had no trouble with them people. . . .I have no fear of those people." [139][58] McLennan County Commissioner Lester Gibson was shocked that Branch Davidian Wayne Martin was involved in any violence. "He was very friendly and quiet. It was common knowledge that he was a Davidian, but he never talked religion." [140][60]

Nevertheless, Koresh and the Branch Davidians, like many Christian fundamentalists, firmly believed that the "advent" or "Second Coming" of Jesus Christ would be accompanied by violence. Millions have studied the Book of Revelations and believe that 144,000 devout Christians will be called up into heaven just before the end of the world and that the sinful remainder of humanity will die horrible deaths. Millions believe that before Jesus appears there will be natural, economic and political disasters for which Christians should be prepared with food stocks and weapons to fight off the "Babylonians"--government agents, evil doers and hungry hordes from the cities.

A reporter who interviewed Lonnie Kliever, professor of religion at Southern Methodist University wrote: "Koresh was typical of the leaders of the millenarian sects who use their ability to interpret Biblical prophecy to gain power and influences. But Koresh's style also should be familiar to millions of Americans, Kliever said after listening to the 58-minute message broadcast the first week of the siege. 'I listened to the tape,' Kliever said. 'I grew up in a fundamentalist Baptist church. I heard that preaching all my childhood. You can hear that same sermon in thousands of churches any Sunday or Wednesday night in this country.'" [141][61]

Koresh was convinced that he was the "Lamb of God" who would "break" the Seven Seals and bring on the Apocalypse and the Second Coming of Christ, as prophesized in the Book of Revelation. These prophecies are very bloody and violent. As the Lamb breaks each of the Seals, the Book of Revelation prophesizes, in summary: 1--a rider on a white horse rides forth to conquer; 2--a rider on a red horse takes away peace so men may slaughter; 3--a rider on a black horse is holding a pair of scales; 4--a rider of a pale horse named death has power over a quarter of the earth to kill by sword, famine, pestilence and wild beasts; 5--those slaughtered for God's word are told to rest a little longer until all brothers in Christ's service are put to death; 6--after a violent earthquake the great day of wrath comes; 7-- "now when the Lamb breaks the seventh seal, there was silence in heaven for about half an hour." [142][62] When BATF raided Mount Carmel and killed six Branch Davidians, Koresh and his followers were convinced that they had to wait a little longer, and then they too would be put to death, as a fulfillment of the Fifth Seal.

Former Branch Davidians claimed that Koresh was obsessed with members proving their loyalty to him and his prophecies by promising to kill or die for them. David Block told BATF agents that he "left the cult group because (Koresh) would always remind them that if they were to have a confrontation with the local or federal authorities, that the group should be ready to fight and resist." (TDR:45)

Branch Davidian Kathryn Schroeder, who has agreed to testify for the prosecution to obtained reduced charges, claims that Koresh "told his followers that soon they would have to go into the world, turn their weapons on individual members of public, and kill those who did not

say they were believers. As he explained to his followers, 'you can't die for God if you can't kill for God.' Koresh later canceled the planned action, telling his followers that it had been a test of their loyalty to him." [143][62] Some former members claim Koresh had a "hit list to eliminate former members who were complaining to law enforcement authorities and the media." (TDR:28) Breault, Jeannine and Robyn Bunds and Dana Okimoto also alleged that Koresh believed "law enforcement officers have to be the vehicle for his death in order for his prophecies to come true." (JDR:Dennis:38)

It is true that after the raid and during the siege Koresh several times challenged negotiators to fight and even claimed that he and his followers had been preparing for battle with authorities since 1985. (JDR:51) If Koresh's statements had been merely "all talk" before the February 28, 1993 BATF raid, they certainly began to appear much more threatening once he and his followers vigorously defended themselves against the raid. Nevertheless, it was government action that prompted their violent reaction.

These allegations of (non-defensive) violence certainly would be alarming to the public if made by a criminal or a radical political group--even though the First Amendment protects such "alarming" speech. However, these statements must be viewed differently when made within a Christian apocalyptic framework. In her recommendations to the Justice Department, Nancy Ammerman wrote that authorities responsible at Waco "should have understood that new or dissident religious groups are often 'millennialist' or 'apocalyptic.' That is, they foresee the imminent end of the world as we know it and the emergence of a new world, usually with themselves in leadership roles."

"They should have understood that new groups almost always provoke their neighbors. . . They defy the conventional rules and question conventional authorities. . . Not surprisingly, then, new groups often provoke resistance. . . organized 'anti-cult' response that make predictable charges (such as child abuse and sexual 'perversion') against groups that are seen as threatening. . . The corollary to their provocation of neighbors is that they themselves are likely to perceive the outside world as hostile. This almost always takes the form of rhetoric condemning the evil ways of non-believers, and that rhetoric can sometimes sound quite violent. It may also be supplemented by rituals that reinforce the group's perception that they are surrounded by hostile forces. . . as the (Branch Davidians) talked about the evils of the federal government and went through the ritual motions of rehearsing a confrontation with their enemies, they may have been reinforcing their own solidarity more than they were practicing for an anticipated actual confrontation. The irony, of course, is that their internal group rhetoric did eventually come true." (TDR:Ammerman:5-6)

Branch Davidian Stan Sylvia expresses the duty incumbent on all of us to study the massacre of the Branch Davidians. "Let's have mercy for the people who died there. Let's examine what really happened there. Regardless of what your opinion of us is. Whether we were bizarre. Whether we were inhumane. Whatever you think of us. It doesn't give anybody a right to come in and kill helpless women and children." [144][63]

THE BRANCH DAVIDIANS

Outside Mount Carmel February 28*: Donald Bunds Paul Fatta, 35 Janet McBean Janet Kendrick Stan Sylvia

Arrested on Feb 28, 1993: Delroy Nash, 29 Woodrow Kendrick, 63

Left Mount Carmel During Siege: Brad Branch, 34 Livingston Fagan, 34 Nahara Fagan, 4 Renae Fagan, 7 Oliver Gyarfas, 19 Victoria Hollingsworth, 59 Heather Jones, 10 Kevin Jones, 11 Mark Jones, 3 Margaret Lawson, 75 James Lawten, 70 Christyn Mabb, 8 Jacob Mabb, 10 Scott Mabb, 12 Daniel Martin, 7 Jaime Martin, 11 Kimberly Martin Sheila Judith Martin, 46 Catherine Matteson, 77 Natalie Nobrega, 11 Gladys Ottman, 67 Anita Richards, 64 Rita Fay Riddle, 35 Ophelia Santoya, 62 Bryan Schroeder, 3 Kathryn Schroeder, 34 Angelica Sonobe, 6 Crystal Sonobe, 3 Joshua Sylvia, 7 Jaunessa Wendel Landon Wendel, 4 Patron Wendel, 1 Tamara Wendel, 5 Kevin Whitecliff, 31

Survived April 19th Fire Renos Avraam, 29 Jamime Castillo, 24 Graeme Leonard Craddock, 31 Clive Joseph Doyle, 52 Misty Ferguson, 17 Derek Lloyd Lovelock, 37 Ruth Ottman Riddle, 29 David Thibodeau, 24 Marjorie Thomas, 30

Died February 28, 1993: Winston Blake, 28 Peter Gent, 24 Peter Hipsman, 28 Perry Jones, 64 Michael Schroeder, 29 Jaydean Carnwell Wendel, 34

Died April 19th, 1993**: Katherin Andrade, 24 Jennifer Andrade, 19 Aldrick Bennett, 35 Susan Benta, 31 Mary Jean Borst, 49 Pablo Cohen, 38 Yvette Fagan, 34 Doris Fagan, 60 Lisa Marie Farris, 26 Ray Friesen, 76 Dayland Gent, 3 Diana Henry, 28 Paulina Henry, 24 Phillip Henry, 22 Stephen Henry, 26 Vanessa Henry, 19 Zilla Henry, 55 Novellette Hipsman, 36 Floyd Houtman, 61 Cyrus Howell, 8 Rachel Howell, 23 Star Howell, 6 Sherri Lynn Jewell, 43 David Michael Jones, 38 Michelle Jones, 18 Serenity Sea Jones, 4 Bobbie Lane Koresh, 16 months David Koresh, 33 Jeffery Little, 31 Nicole Elizabeth Gent Little, 24 Livingston Malcolm, 26 Douglas Wayne Martin, 42 Lisa Martin, 13 Sheila Martin, 15 Abigail Martinez, 11 Audrey Martinez, 13 Juliete Santoyo Martinez, 30 Crystal Martinez, 3 Joseph Martinez, 30 Jillane Matthews Alison Bernadette Monbelly, 31 Melissa Morrison, 6 Rosemary Morrison, 29 Sonia Murray, 29 Theresa Noberega, 48 James Riddle, 32 Rebecca Saipaia, 24 Judy Schneider, 41 Mayanah Schneider, 2 Steve Schneider, 48 Laraine B. Silva, 40 Floracita Sonobe, 34 Scott Kojiro Sonobe, 35 Aisha Gyarfas Summers, 17 Gregory Allen Summers, 28 Startle Summers, 1 Isiah Martinez, 4 Hollywood Sylvia Lorraine Sylvia, 40 Rachel Sylvia, 13 Doris Vaega Joanne Vaega, 4 Margarida Joanna Vaega, 47 Neal Vaega, 37 Martin Wayne, 20 Mark H. Wendell

This is not a complete list.

* Several dozen more Branch Davidians lived elsewhere or were temporarily outside Mount Carmel on February 28, 1993.

** Most of those not named were children, including two unborn children.

Source: Associated Press, Justice Department Report and other sources.

[145]BATF-TREASURY DEPARTMENT VIOLATIONS OF RIGHTS, EXCESSIVE FORCE AND COVERUP: THE FEBRUARY 28, 1993 RAID ON THE BRANCH DAVIDIANS

In May of 1992 the United Parcel Service informed the McLennan County Sheriff's Department that the Branch Davidians were receiving "suspicious" deliveries, including shipments of firearms worth more than \$10,000, inert grenade casings, and a substantial quantity of

black powder. (Like the Anti-Defamation League and Cult Awareness Network, UPS evidently turns over information about citizens' legal activity to authorities.) The Sheriff's Department contacted BATF and Special Agent Davy Aguilera was assigned to investigate. Around the same time, the Waco Tribune-Herald, which had been contacted by former members, began researching an expos=82 about the Branch Davidians' alleged arms stockpiling.

>From June until August, Aguilera investigated companies which had sold weapons to David Koresh and discovered the Branch Davidians bought about \$43,000 worth of weapons from March 26 to August 12, 1992, after which such purchases virtually ceased. The case effectively was dropped for more than two months. It was picked up again in November, after the "60 Minutes" television show contacted BATF about a planned expos=82 of the agency, and after the Waco Tribune-Herald contacted BATF about their planned expos=82 of the Branch Davidians' arms buildup (TDR:67).

In November Assistant U.S. Attorney Bill Johnston held that "there already was sufficient evidence of illegal activity to meet the threshold of probable cause for a search warrant. . .and tactical planning for an enforcement operation began in earnest." (TDR:37) However, BATF Director Stephen Higgins admitted to the House Judiciary Committee on April 28, 1993, that despite the information collected about Koresh's 1992 weapons purchases, "We had a review here at headquarters office in December with respect to whether we had probable cause. We decided at that point that we did not, and we continued to gather information. We brought people in from Australia; we got the undercover agent in; we interviewed any number of people." [146][64] Higgins was referring to the December 24, 1993 meeting in Washington where BATF Associate Director of Enforcement Daniel Hartnett and his Deputy Director Edward Conroy demanded that more probable cause should be developed and tactical plans should be slowed down. (TDR:Appendix D-7)

What BATF did in early December was to begin interviewing disgruntled former members and to set up an undercover house across the street from Mount Carmel Center. However, David Koresh and the Branch Davidians were aware throughout the investigation that some agency was monitoring them. At different points they invited the BATF and the Sheriff's Department to look at their guns, complained to the Sheriff's Department about blatant undercover activities and purposely befriended individuals they knew were undercover agents. Meanwhile BATF went forward with plans for a full scale paramilitary raid on Mount Carmel.

On February 12, 1993, BATF Director Higgins was first fully briefed on the plan. (TDR:Appendix D-11) On February 25th, BATF agent Davy Aguilera, with the assistance of U.S. Attorneys Bill Johnston and John Phinzy, produced a "Probable Cause Affidavit in Support of Search Warrant." On the basis of that affidavit, Magistrate Judge Dennis S. Green signed a search warrant for illegal weapons and explosives for Mount Carmel and the "Mag Bag" garage and an arrest warrant for David Koresh for possession of an unregistered destructive device. [147][65] However, Treasury Department officials nixed the raid plan when they discovered its existence Friday, February 26th. BATF Director Higgins convinced officials that because of the Waco Herald-Tribune series on the Branch Davidians, February 28th might be the last opportunity to, as one put it, "catch the cult members unprepared and away from their stockpile of heavy weaponry." [148][66] And Higgins told officials that raid planners had assured him that the raid would be called off if the element of surprise was lost. They did not tell him they were expecting a shootout.

Saturday, February 27th the Waco Herald-Tribune began their series, "The Sinful Messiah." And on Sunday, February 28th, despite their knowledge that the Branch Davidians had been forewarned, 76 armed BATF agents stormed Mount Carmel Center. The assault left four BATF agents and five Branch Davidians dead. Another Branch Davidian would be killed later that afternoon trying to return home.

In this section the Committee for Waco Justice report describes BATF violations of constitutional rights and excessive use of force in their investigation of and February 28th raid upon the Branch Davidian religious group and the subsequent BATF and Treasury Department coverup. The report then presents the Committee for Waco Justice conclusions: that BATF agents drove the Branch Davidians to violent self-defense, resulting in the deaths of four agents and six Branch Davidians, and that the Attorney General should appoint an Independent Counsel to identify and prosecute responsible agents and officials for official misconduct, violations of rights, and negligent homicide. We will present further recommendations in the last section of this report.

It should be noted that none of the testimony given to Treasury Department "review teams" or to Congress was given under oath. Also, the Treasury Department report does not include information which might effect the prosecutions of the Branch Davidians now on trial.

TREASURY DEPARTMENT AND BATF CHAINS OF COMMAND FEBRUARY 28, 1993 TREASURY DEPARTMENT

Lloyd Bentsen - Secretary of the Treasury
John P. Simpson - Acting Assistant Secretary
Ronald K. Noble - unconfirmed Assistant Secretary of the Treasury
for Enforcement (a consultant at this point)

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Stephen Higgins-Director
Daniel Hartnett - Associate Director of Enforcement
Edward Conroy - Deputy Associate Director of Enforcement
David Troy - Chief of Intelligence Division@@National
Response Plan" Assignments for "Waco Operation"
SAC Philip Chojnacki - Incident Commander
ASAC Chuck Sarabyn - Tactical Coordinator
SAC Pete Mastin - Deputy Incident Commander
ASAC Jim Cavanaugh - Deputy Tactical Coordinator
SA Sharon Wheeler - Public Information Officer
RAC Bill Buford - Special Response Team 1 leader
SAC Curtis Williams - Special Response Team 2 leader
SAC Gerald Petrilli - Special Response Team 3 leader
SAC Ted Royster - planner, untitled raid coordinator
SA Earl Dunagan - investigator
SA Davy Aguilera - investigator
SA Robert Rodriguez - undercover agent@@Note:
SAC-Special Agent-in-Charge
ASAC-Assistant Special Agent-in-Charge
RAC-Resident Agent-in-Charge
SA-Special Agent

[149]1. BATF IGNORED BRANCH DAVIDIANS' LEGAL GUN BUSINESS

These first five sections will review the process by which BATF agents gathered evidence of probable cause to serve a search warrant on the Branch Davidians and to arrest David Koresh. Some might consider this

detailed review unnecessary, given government assertions that illegal weapons were found after the fire. However, it is important to understand that a raid was conducted despite the facts that Branch Davidians ran a legal business, BATF found no evidence of illegally purchased weapons, and the Branch Davidians attempted to cooperate with investigators. Moreover, the "probable cause" to obtain a search warrant was based largely on biased information, information used to excuse a full paramilitary raid by 76 armed agents. Such unnecessary paramilitary raids on any American undermines all our rights.

Some Branch Davidians "confirmed that they stockpiled weapons in preparation for what Mr. Koresh long prophesized would be an apocalyptic fire with law enforcement officials that could be a precursor to the end of the world. But they insisted that the weapons were obtained legally." [150][67] However, others will testify during the trial that only certain members of the group had known about the weapons or handled them. [151][68] In any case, it is not illegal to stockpile guns for defense against some future illegal attack by government agents.

More importantly, BATF investigative agents either never discovered--or completely ignored--the fact that the Branch Davidians ran a profitable legal gun business. According to the Washington Post, its "biggest moneymaker was its thriving trade in guns and ammunition, bought from mail-order firms and local gun stores and resold at a profit at gun-fancier fairs throughout Texas. Among the products it marketed at these fairs were souvenir plaques made of hand grenade casings mounted on wood." [152][69] Even Marc Breault mentions that of the Branch Davidian businesses, the "most important of all" was trade in weapons. [153][70] Clifford L. Linedecker writes, " (Paul) Fatta was a regular at gun shows in Austin, Dallas, Forth Worth, San Antonio, and other cities in Texas and sold everything from camouflage clothing to military-type ready-to-eat meals, gun grips, and weapons." [154][71] The September, 1993, indictment against Fatta and other Branch Davidians admits that "Paul Fatta acquired a Texas Sales and Use Tax Permit in the name of "The Mag Bag." (JDR:Indictment:4)

Koresh and the Branch Davidians were working with gun dealer Henry McMahon, who held a Class III dealer's license allowing him to legally own, sell, and buy, any type of weapon. In April of 1993, McMahon told the Pensacola television show "Lawline" that Koresh had purchased a large number of legal military-style semi-automatics as an investment, assuming that their value would increase if the government somehow restricted their manufacture or sales in the future. Considering that this had happened with other guns in the past, this was a reasonable business investment. McMahon said most of these guns were kept boxed and never fired, to enhance resale value. [155][72] During the first days of the Branch Davidian trial, Paul Fatta's attorney Mike DeGeurin told the jury: "Koresh and Fatta saw that a tremendous investment could be made by buying these guns (semiautomatic rifles). They thought the guns may be outlawed in Washington and that they would triple or quadruple in price." [156][73]

BATF Agent Davy Aguilera wrote in his February 25, 1993, affidavit: "June 9, 1992, I requested a search of the records of the Firearms Licensing Section of the Bureau of Alcohol, Tobacco and Firearms, Atlanta, Georgia, to determine if Howell, Fatta or the 'Mag-Bag' Corporation were licensed as Firearms dealers or manufacturers. The result of this search was negative." He did not search under the names David Koresh or Michael Schroeder, who also signed for guns, or any of a number of other adults who lived at Mount Carmel. Nor did he do a second search when the case was reactivated in late November.

Aguilera's affidavit mentions that David Block said that "he attended

two gun shows with Vernon Howell, Mike Schroeder, Paul Fatta, and Henry McMahon who is a Federally licensed firearms dealer." Yet Aguilera was unable to discover they all had legal business dealings. If he had, perhaps BATF might not have been so alarmed by the Branch Davidians buying \$200,000 in weapons over a 16 month period. [157][74]

[158]2. BATF FOUND NO EVIDENCE WEAPONS WERE PURCHASED ILLEGALLY

Davy Aguilera's investigation of shipments from various arms vendors to the "Mag-Bag" and of gun dealer Henry McMahon's records indicated that during 1992 the Branch Davidians acquired the following firearms and related explosive paraphernalia: one hundred four (104) AR-15/M-16, upper receiver groups with barrels; eight thousand, one hundred (8,100) rounds of 9mm and .223 caliber ammunition for AR-15/M-16; twenty (20), one hundred round capacity drum magazines for AK-47 rifles; two hundred sixty (260), M-16/Ar-15, magazines; thirty (30) M-14 magazines; two (2) M-16 EZ kits; two (2) M-16 Car Kits; one M-76 grenade launcher; two hundred (200) M-31 practice rifle grenades; four (4) M-16 parts set Kits "A"; two (2) flare launchers; two cases (approximately 50) inert practice hand grenades; 40-50 pounds of black gun powder; thirty (30) pounds of Potassium Nitrate; five (5) pounds of Magnesium metal powder; one pound of Igniter cord (A class C explosive); ninety-one (91) AR/15 lower receiver units; twenty-six (26) various calibers and brands of hand guns and long guns; 90 pounds of aluminum metal powder; 30-40 cardboard tubes. The amount of expenditures for the above listed firearm paraphernalia, excluding the (91) AR-15 lower receiver units and the (26) complete firearms, was in excess of \$44,300."

All these guns, gun parts, powders, inert grenades, and other equipment were lawfully purchased and may be legally owned. None per se established probable cause that Koresh had violated or was about to violate federal law. As has been noted, the seemingly large amounts are not illegal either according to the Firearms Owners' Protection Act of 1986 and the Supreme Court decision United States vs. Anders, nor are they unusual for someone dealing in weapons or holding them as an investment.

Aguilera did not investigate the one dealer who might possibly have sold Koresh illegal arms. In the affidavit he states, "because of the sensitivity of the investigation" he did not contact "vendors with questionable trade practices" who had sold to Koresh, including one suspected of "unlawful possession of machineguns, silencers, destructive devices, and machinegun conversion kits." In effect, Aguilera refused to check to see if Koresh had bought illegal items from this source and instead inferred probable cause. This is blatantly unconstitutional. Aguilera suspected the Branch Davidians were breaking laws regarding machineguns and explosives. It is only legal to own a machinegun--or machinegun conversion kit-- manufactured before May 19, 1986. Both must be registered and one must also pay a \$200 transfer tax upon buying the machinegun. Uncertainty arises because these conversion kits can be used to turn other guns into machineguns. According to former enforcement chief Robert Sanders, this area remains so unclear that, "There are no published rulings telling you what is and what isn't (a violation) ." [159][75]

What would probably be illegal is: a) buying a registered machinegun without paying the \$200 tax; b) owning unregistered conversion kits; c) using a registered conversion kit to convert a gun into a machinegun, but not paying the \$200 tax; d) using an insufficient number of parts from a registered conversion kit to convert a gun into

a machinegun, even if the tax is paid; e) owning an unregistered conversion kit; f) owning all parts necessary to assemble a brand new machinegun, even if the parts are not assembled; g) unregistered manufacturing of conversion parts; h) using illegally manufactured parts to convert guns into machineguns; i) buying an illegal machinegun produced in any of ways above.

As of December, 1992, Aguilera's only evidence that the Branch Davidians were doing one or more of these things was that they had bought a number of legal weapons and legal gun parts which, with the help of a few parts they did not have, can be converted into machineguns. Aguilera states that Firearms Enforcement Officer Curtis Bartlett told him that the firearms parts which Howell had received, and the method by which he had received them, was consistent with findings in other BATF investigations which resulted in the seizure of illegal machineguns. However, BATF's suspicions remained pure conjecture.

It is also legal to own all the destructive device- related items Aguilera listed--the grenade launcher, M-31 practice rifle grenades, inert practice hand grenades, black gun powder, potassium nitrate, magnesium metal powder, aluminum powder, and igniter cord. What would not be legal is to manufacture these materials into grenades or other destructive devices. Aguilera asserted in the affidavit that BATF explosives expert Jerry A. Taylor had concluded that these materials could be used to manufacture explosives. However, according to Paul H. Blackman, Ph.D. "the assertion that possession of the black powder and inert grenades constitutes an explosive grenade because it is possible to make one is misleading. Not only are more materials needed, along with the machinery to drill and plug a hole, but without intent, there is no violation of the law." Blackman asserts the Branch Davidians were using the explosive materials for construction projects and for refilling ammunition, both legal uses. [160][76] It was because of this lack of probable cause that in December BATF officials instructed Aguilera to gather information about Koresh's "intent."

[161]3. "PROBABLE CAUSE" BASED ON BIASED INFORMATION ABOUT INTENT

The credibility and reliability of witnesses in an affidavit is very important. Yet all Aguilera's witnesses as to Koresh's "intent" had some credibility problems. Neighbor Robert L. Cervenka, who alleged to Aguilera he actually had heard machinegun fire on the property, had been involved in a property dispute with the Branch Davidians. [162][77] Joyce Sparks' evidence on intent was delivered to Aguilera through another BATF agent and, as we shall see, was probably a garbled transmission. All other evidence on intent came from disaffected former Branch Davidians, all of whom were influenced by "cult busters" Marc Breault and Rick Ross.

a. Rick Ross

Aguilera began contacting former members in November, 1992. He obtained their names from the 1990 affidavits Breault and other former members left with the local Sheriff's Department and from Rick Ross. Nancy Ammerman, who had access to all BATF and FBI files, wrote "The ATF interviewed the persons (Ross) directed to them and evidently used information from those interviews in planning their February 28th raid." (JDR:Ammerman:Addendum) Rick Ross "deprogrammed" David Block, who lived at Mount Carmel only three months, in the summer of 1992 in the home of CAN national spokesperson Priscilla Coates in Coates' home in California. [163][78] He or California CAN representatives were probably in close contact with Jeannine, Robyn and Debbie Sue Bunds,

all of whom gave BATF information. (Linedecker writes that in 1991 California police said Robyn was being deprogrammed. [164][79])

Evidence that Rick Ross had a financial motivation for inciting BATF against the Branch Davidians is contained in Marc Breault's January 16, 1993, diary entry, where he describes a conversation with Branch Davidian Steve Schneider's sister. "Rick (Ross) told Sue that something was about to happen real soon. He urged her to hire him to deprogram Steve. Rick has Sue all scared now. The Schneider family doesn't know what to do. Rick didn't tell them what was about to happen, but he said they should get Steve out as soon as possible. I know that Rick has talked to the ATF." [165][80] It is unknown how many other families Ross contacted offering his expensive services, "before it's too late."

b. Former Members' Allegations About Intent

Marc Breault, David Block, Poia Vaega and Jeannine, Robyn and Debbie Sue Bunds provided Aguilera with the following evidence of "intent" about illegal machineguns: Robyn Bunds said she found what David Bunds called a "machinegun conversion kit" in their LaVerne home in 1991, but Aguilera did not interview David; Jeannine and Debbie Sue Bunds said they saw a Branch Davidian shooting a gun that must have been a machinegun because it shot so fast; Debbie Sue said she heard Koresh say he wished he owned a machinegun; Poia Vaega said that Koresh had passed an "AK-47 machinegun" around at a meeting (AK-47s also come in legal, semi-automatic versions); Marc Breault said Koresh told him how easy it was to convert a gun to a machinegun; David Block told Aguilera that Donald Bunds, a mechanical engineer, who remained with the group after his family left it, operated a metal lathe and milling machine that had the capability to fabricate firearm parts and that he had observed Bunds designing a machinegun on a computer.

Jeannine Bunds, Breault and Block provided Aguilera with the following evidence of intent to produce illegal explosives: Jeannine Bunds said she had seen one "grenade", but not that she knew it contained explosive materials; Marc Breault said that sometime before 1989 Koresh said he wanted to "obtain and/or manufacture" grenades; David Block said he had heard Koresh ask if anyone "had any knowledge about making hand grenades" and another time he "heard discussion about a shipment of inert hand grenades and Howell's intent to reactivate them"; both Breault and Block asserted that Koresh had expressed interest in the (legally available) book Anarchist Cookbook which explains how to make explosives.

While such allegations might be credible in most witnesses, they must be regarded skeptically when coming from individuals involved with professional or amateur cult busters. The Treasury report itself notes, "the planners failed to consider how Block's prior relations with Koresh, and his decision to break away from the Branch Davidians at the Compound, might have affected the reliability of his statements. Although the planners knew Block had met with a self-described 'deprogrammer,' Rick Ross, they never had any substantive discussions with him concerning Block's objectivity about and perspective of Koresh and his followers." (TDR:143-144) All those who gave BATF the all important "evidence of intent" had similar credibility problems!

c. BATF and Treasury Department Use of Former Members' Allegations

It is interesting to note that none of the most inflammatory allegation's about Koresh's violent criminal intent made by former members--that he had made up a "hit list" against former members, that he had once "tested" them by saying they would have to turn their guns

on the public, that Branch Davidians were considering "mass suicide," or that they had renamed Mount Carmel Center "Ranch Apocalypse" [166][81] -- were included in the Aguilera's February 25th affidavit. Yet the Treasury report claims these allegations--some of which may not have been made until after the raid--were a prime excuse for the raid because Koresh "might soon have been inspired to turn his arsenal against the community of nonbelievers." (TDR:127)

It is particularly disturbing to see that these cult buster stories even convinced top Treasury Department officials to support the plan. Assistant Secretary of the Treasury for Enforcement Ronald K. Noble told the April 9, 1993, House Appropriations subcommittee hearing that from what BATF officials had told him, the Branch Davidians were "people who were feared to be gathering machineguns and automatic weapons and explosives for either a mass suicide or for some kind of assault near Waco, Texas; that they had bad intentions, evil intentions." [167][82]

[168]4. "PROBABLE CAUSE" BASED ON RELIGIOUS AND POLITICAL BELIEFS

In his February 25th affidavit Aguilera includes third hand information--from social worker Joyce Sparks to Special Agent Carlos Torres to himself--that "during her conversation with Koresh, he told her that he was the 'Messenger' from God, that the world was coming to an end, and that when he 'reveals' himself, the riots in Los Angeles would pale in comparison to what was going to happen in Waco, Texas. Koresh declared that it would be a 'military type operation' and that all the 'non-believers' would have to suffer." However, it is likely Sparks misinterpreted Koresh's Biblically prophetic statements, statements fully protected under the First Amendment freedom of religion provision.

The affidavit also used other statements fully protected under the First Amendment freedom of speech provision as evidence of criminal intent. These include Koresh's talk about the desire to own machineguns and the fully legal Anarchist Cookbook and his telling undercover Agent Robert Rodriguez it is possible to purchase a "drop-in-sear" to convert an AR-15 rifle into an illegal machinegun. Former member Robyn Bunds said that "she and the other residents were subjected to watching extremely violent movies of the Vietnam War which Howell would refer to as training films." However, the movies alluded to were popular Hollywood films "Hamburger Hill," "Platoon" and "Full Metal Jacket." [169][83]

Particularly disturbing is the affidavit's mentioning Koresh's assertion of his right to bear arms and his criticism of BATF as evidence of criminal intent. "David Koresh stated that the Bible gave him the right to bear arms. . . David Koresh then advised Special Agent Rodriguez that he had something he wanted Special Agent Rodriguez to see. At that point he showed Special Agent Rodriguez a video tape on ATF which was made by the Gun Owners Association (G.O.A.). This film portrayed ATF as an agency who violated the rights of Gun Owners by threats and lies." A later March 9, 1993 affidavit signed by BATF agent Earl Dunagan actually listed as objects for which BATF wanted to search audio and video tapes which criticized "firearms law enforcement and particularly the Bureau of Alcohol, Tobacco and Firearms (ATF)." BATF wanted to present these as "evidence of Howell's or other cult members' motive for wanting to shoot and kill ATF agents."

[170]5. OTHER IRREGULARITIES IN THE FEBRUARY 25, 1993 AFFIDAVIT

Davy Aguilera's February 25, 1993 affidavit contains stale, inaccurate and misleading information and presents an "indefensible" probable cause theory. Considering the sloppiness of Aguilera's February 25, 1993 affidavit, it is not surprising that the Treasury report does not bother to include a copy as one of its several appendixes!

a. Stale Information

All Aguilera's supporting information regarding the purchase of possibly suspicious weapons was more than eight months old. According to David Koresh's attorney Dick DeGuerin, the February 25th affidavit contained "stale information" under the 1932 Supreme Court case *Sgro v. United States* which holds: "the magistrate (has to) conclude that what they are searching for is there now, not that it was there at some time in the past." [171][84] Similarly, *United States v. Ruff*, 984, F.2d 635 5th Cir., 1993 holds that evidence must be fresh. [172][85] Most former members' allegations that they had heard Koresh discuss machineguns or seen Koresh use alleged machineguns came from 1989 and 1991. David Block's allegations that he'd heard Koresh discuss making machineguns and grenades were also more than six months old.

b. Inaccurate Information

Aguilera's affidavit contained glaring errors of fact that attest to the shoddy nature of the "supporting information." Despite Aguilera's swearing to be familiar with federal firearms and explosives laws, he confused the legal definition of "destructive devices" and "firearms." He called E-2 Kits, "E-Z kits" and did not mention that they are legal gun parts kits, not machinegun conversion kits. He claims that the AK-47 has an upper and lower receiver, when in fact it has a one-piece receiver. [173][86] And he claims the legal .50 caliber rifle Block describes is probably an illegal .52 caliber Boys rifle, though Paul H. Blackman believes it is unlikely such a gun even exists. [174][87] (In its discussion of the probable cause investigation, the Treasury report corrects Aguilera's errors without mentioning it has done so.)

It is important to note that none of the former Branch Davidians who claimed they had seen or heard machineguns were knowledgeable about firearms, nor did Aguilera swear that they were. All identified the guns from pictures and from the fact that they fired more rapidly than normal shotguns. And none seemed to be aware the Branch Davidians owned "hellfire" devices that make the guns sound like machineguns. David Bunds, who Aguilera claims had arms' expertise, was never even interviewed.

Two non-weapons factual errors are of note. The affidavit states a former member "observed at the compound published magazines such as, the 'Shotgun News' and other related clandestine magazines." However, *Shotgun News* is a legal, aboveboard publication with a distribution of 150,000. [175][88] Also, the affidavit repeats Joyce Sparks' inaccurate statement that Koresh made comments about the Los Angeles riots on a date three weeks before the riots began. The Treasury report claims that, despite this error, Sparks' records show she did visit Koresh at Mount Carmel the day after the beginning of the riots. (TDR:125-126)

c. Misleading Information

In 1978 the Supreme Court held in *Franks vs. Delaware* that a search warrant is invalid if the agent has misled or lied to the magistrate in order to get it. Aguilera's affidavit describes child abuse

allegations and the Texas Department of Protection and Regulatory Services investigation, but does not mention that the case was closed on April 30, 1992, with no evidence of child abuse. Similarly, the affidavit states that a relative of an ex-member alleges "a false imprisonment for a term of three and one half (3 1/2) months," but does not mention that the FBI opened a (probably-related) case for "involuntary servitude" in April, 1992, and closed it in June, 1992.

The affidavit states that Branch Davidian neighbor Robert L. Cervenka reported what sounded like machinegun fire in February, but does not mention that the Branch Davidians discussed this allegation with a McLennan County Sheriff who assured them the "hell fire" devices they were using were legal. It states that a Deputy Sheriff heard a large explosion and saw smoke at Mount Carmel on November 6, 1992, but does not mention that the Sheriff didn't consider it important enough to investigate--or that the Branch Davidians were excavating for a large underground tornado shelter at the time.

The affidavit states that INS records show most foreign nationals had overstayed their entry permits or visas and that "it is a violation of Title 18, United States Code, Section 922 for an illegal alien to receive a firearm"; it does not provide evidence that any illegal alien was using a firearm. The affidavit states, "Howell forced members to stand guard at the commune 24 hours a day with loaded weapons," but does not mention that in 4 weeks of observation from the undercover house, agents saw no such armed guards. (TDR:53)

BATF experts told Aguilera that Koresh's gunpowder and igniter cord "were themselves explosives requiring proper registration and storage--neither of which Koresh provided." (TDR:124) However, Paul H. Blackman writes that since there was no attempt to contact Koresh to ask him what kind of storage he was providing, BATF did not know if it was being illegally stored. Moreover, the amount of gunpowder Koresh had was expressly exempt from the law, and no registration is required for igniter cord (U.S. Code, Title 18, Sec. 841 et.seq.; Title 26, Sec.5845(f) [176][89]

d. Indefensible Probable Cause Theory

Aguilera's February 25th affidavit includes several serious allegations related to matters which are not under BATF's authority to investigate: child abuse, involuntary servitude, illegal drugs, and tax avoidance. The Treasury report defends Aguilera's presenting this inflammatory material to the Magistrate. "While reports that Koresh was permitted to sexually and physically abuse children were not evidence that firearms or explosives violations were occurring, they showed Koresh to have set up a world of his own, where legal prohibitions were disregarded freely." (TDR:27) Paul H. Blackman writes, "Such a theory would allow law enforcement agencies to allow any allegations of any serious criminal activity to help to establish probable cause that all other criminal activities were also being engaged in. In law, the theory is currently indefensible." [177][90]

[178]6. BATF IGNORED BRANCH DAVIDIAN ATTEMPTS TO COOPERATE

The Treasury report alleges: "Aguilera wisely sought to keep his investigation a secret from Koresh and his followers. . . (and) . . . sharply circumscribed his inquiries about Koresh to third parties, including arms dealers and former cult members." (TDR:123) However, the Branch Davidians clearly knew that they were under surveillance, were worried about it and even tried to cooperate to with authorities. Evidence of their worry comes from Marc Breault's February 18, 1993,

diary entry where he writes that Steve Schneider told his sister Sue: "Vernon is worried about the arms he has and what the Government might do about them. I asked Sue whether Steve mentioned illegal weapons. She assured me that Steve did not mention illegal weapons, but only arms in general. Steve also said Vernon is searching Reuters and AP news services to find out anything about Government involvement in arms cases. . . Steve said Vernon is particularly interested in the Randy Weaver case." [179][91] The Branch Davidians were wise to worry that the fate that befell the Weaver family might befall them.

a. Koresh Had Cooperated with More Serious Investigations

The Treasury report claims, "There was, in fact, no evidence that Koresh was prepared to submit to law enforcement authorities or that he had done so in the past." (TDR:135) In fact, Koresh had been investigated on more serious charges than gun law violations and had cooperated fully with law enforcement. In 1987, when Koresh and seven Branch Davidians were indicted for attempted murder after the shootout with George Roden, the Sheriff called Koresh and told him they should turn themselves in and surrender their weapons. When Deputies showed up to arrest them, they complied. Former McLennan County District Attorney Vic Feazell, who prosecuted Koresh in that case criticized federal agents, and said, "If they'd called and talked to them, the Davidians would've given them what they wanted." [180][92] In his February 25th affidavit Aguilera reports on the shootout but not Koresh's full cooperation with authorities. The Treasury report dismisses this evidence, given Koresh's "disdain for fire arms laws and hatred for those charged with their enforcement." (TDR:135) The report includes a photograph of Koresh and followers dressed in fatigues and armed with weapons, allegedly right before the shootout. (TDR:19-20)

In 1991, when LaVerne, California police demanded Koresh return their child to Robyn Bunds, he did so immediately. Koresh and Sherri Jewell cooperated fully with the Michigan court which awarded custody of Kiri Jewell to her father. And between February and April, 1992, Koresh allowed Texas Department of Protection and Regulatory Services and McLellan County Sheriff's Department personnel to inspect Mount Carmel on three occasions and visited their offices once.

b. Koresh Invited Sheriff to Inspect Weapons in 1992

As mentioned above, in February, 1992, Robert L. Cervenka complained to the Sheriff's office that he had heard machinegun fire at Mount Carmel. According to Aguilera's affidavit, he even "offered to allow the Sheriff to use his property as a surveillance post." Several months later Branch Davidians contacted the local Sheriff about this. The New York Times reports, "According to Mr. Fatta, the weapons the Davidians were firing at that time were legal AK-47s and AR-15s outfitted with a 'hellfire trigger' that allowed for rapid firing without converting the rifles into fully automatic weapons. 'We had heard that one of the neighbors had been approached about using their property as a listening post,' Mr. Fatta said several weeks ago, 'and we went to the local sheriff's department and asked them if the hellfire triggers were legal, just to make sure. We were told that they were legal.'" [181][93] According to another article, they told the Sheriff, "why don't you come and ask us what we've got." [182][94]

c. Koresh Invited BATF to Inspect Weapons in 1992

The Treasury report alleges: "During the compliance inspection of Henry McMahon. . .Special Agent Aguilera deliberately led McMahon to believe that the inspection was a routine administrative inquiry."

(TDR:186-188) However, it fails to mention McMahon's version of the visit. Because Aguilera and another BATF agent were asking Henry McMahon a lot of questions about Koresh, he immediately called Koresh to inform him. According to McMahon, "He said, 'If there's a problem, tell them to come out here. If they want to see my guns, they're more than welcome.' So I walked back in the room, holding the cordless phone and said, 'I've got (Koresh) on the phone. If you'd like to go out there and see those guns, you're more than welcome to.' They looked at each other and Aguilera got real paranoid, shaking his head and whispering, 'No, no!' And so I went back to the phone and told David they wouldn't be coming out." [183][95]

After Koresh's attorney Dick DeGuerin mentioned the incident during a media panel in September, 1993, reporters from two Houston papers contacted Jack Killorin, Chief of BATF's Public Affairs. He told one reporter he was not surprised that a federal agent rejected an offer to inspect weapons. "The preferred method by the law is going with the standard of getting a warrant before entering a home. We execute such warrants." [184][96] He told the other reporter, "Koresh's learning of the investigation in July 1992 had no effect on the raid or the resulting standoff between agents and cult members." [185][97]

d. Lieutenant Lynch Statement on Another Service of Warrant

McLennan County Sheriff's Lieutenant Larry Lynch told the June 9, 1993, House Appropriations subcommittee hearing about having visited Mount Carmel with only a few officers to serve a warrant on an individual who no longer resided there. [186][98] One lawmaker asked BATF Chief of Intelligence David Troy about Lynch's statement. "Did you have a conversation with the local law enforcement officials regarding their previous service of arrest warrants and search warrants?" Troy replied, "That is the first time I had ever, myself, had heard that there had been an attempt that was not related to that shootout that occurred in 1987, to serve any type of legal document at the compound by any other enforcement agency. . . I don't believe they ever considered seriously driving up in that front yard and telling him we had a Federal search warrant for the place." [187][99]

This attests to the BATF's failure to consult adequately with local authorities. BATF Associate Director Daniel Hartnett informed the subcommittee that at least one McLennan County Sheriff's Lieutenant was assigned full time to BATF planners. [188][100] This may have been Lieutenant Barber, who had had numerous contacts with both former and current Branch Davidians. Lieutenant Larry Lynch stated during the hearing that Lieutenant Barber was his superior during the February 28, 1993 raid. [189][101] Marc Breault claims it was Lieutenant Barber who called his complaints "sour grapes." [190][102] Clifford L. Linedecker writes that Branch Davidians discussed the Cervenka complaint and the hellfire devices with Lieutenant Barber. [191][103] It is unknown if the officer assigned to BATF--be it Lieutenant Barber or someone else--conveyed information about Branch Davidians past cooperation to BATF planners or if BATF ignored such information. One reason for any "communications breakdown" might be found Marc Breault's allegation, "ATF believes there might be a leak to Vernon from the McLennan County Sheriff's Department. They are bypassing the local authorities." [192][104]

e. Koresh Befriended Undercover Agents

On January 11, 1993, eight undercover agents were assigned to pose as students living in the two bedroom house across the street from Mount Carmel Center. Branch Davidians immediately visited that house, but undercover agents refused to let them come in, despite their repeated requests. A few days later Koresh visited the family next door to the

undercover house and told them he thought the "students" were FBI agents and that he was expecting a visit from the FBI. (TDR:Appendix D:8-9) Koresh said he doubted the men were students because they were too old, their cars were too new, they carried brief cases, and the owner had previously refused to rent the house to anyone. However, Koresh remained unsure as to which government agency had him under surveillance. (TDR:187)

Koresh then went out of his way to befriend agent Robert Rodriguez (who was working under the name "Gonzales"). He invited him to visit Mount Carmel Center, listen to music, and shoot guns in the back of Mount Carmel. (TDR:D-11) Koresh invited Rodriguez to take Bible studies and even invited him to join the Branch Davidians. After the fire Rodriguez admitted to reporters that Koresh's teachings did affect him. "He was close," he finally said, his voice cracking at the memory." [193][105] Koresh told KRLD radio reporters February 28th that he was disappointed that after his talks with Rodriguez, he and his superiors did not "understand" that Koresh was a serious religious person worthy of "respect." On Sunday, February 28th, Koresh was in a Bible study with Rodriguez when he was told that BATF and National Guard were approaching. Rather than take Rodriguez hostage, as he easily could have, he told Rodriguez that he knew BATF and the National Guard were coming and shook Rodriguez' hand as the agent left.

f. Koresh Complained to Sheriff about UPS Surveillance

On January 27, 1993, a special agent posed as a UPS trainee and accompanied a UPS delivery person to the MagBag and Mount Carmel Center. His attempts to get into the buildings made Koresh suspicious. He told the delivery person "I know we're being watched." According to the Treasury report, "This undercover effort was so transparent that Koresh complained to the local sheriff's department. He accused the department of trying to infiltrate the Compound." (TDR:187-188)

g. After Raid, Koresh Stated He Would Have Cooperated

The above evidence lends credence to Koresh's claims on the publicly released February 28, 1993, "911" tape that he would have cooperated with authorities if they had contacted him. On the 911 tape Koresh told 911 operator Lieutenant Larry Lynch, "You see, you brought your bunch of guys out here and you killed some of my children. [194][106] We told you we wanted to talk. No. How come you guys try to be ATF agents? How come you try to be so big all the time?" Later in the tape he says, "Now, we're willing, and we've been willing, all this time, to sit down with anybody. You've sent law enforcement out here before. . . And I've laid it straight across the table. I said, if you want to know about me, sit down with me and I'll open up a book and show you Seven Seals."

After the February 28 raid, Koresh said to KRLD radio reporters, who asked how he felt about the 4 agents who died, "Unnecessary, my friend. These men, they don't know anything about me. They don't know what I teach. I respect law enforcement. I loved the Waco Sheriff Department. They treated me good. When we had the child accusations against us, some Sheriff department guys came out and they treated us with the highest respect. . . Larry Abner. I loved the guy. I took him and I showed him around and everything. They took the children off where they can talk to them personally. Those kind of people I can deal with." When a reporter asked if he would have gone to town and discussed the weapons with the Sheriff's Department, Koresh answered, "I would have come. I would have come. I would have come."

The Houston Chronicle obtained tapes of telephone conversations

between Koresh and BATF agent Jim Cavanaugh shortly after the assault. Koresh told the agent, "It would have been better if you just called me up or talked to me. Then you could have come in and done your work." [195][107]

[196]7. QUESTIONABLE GROUNDS FOR A PARAMILITARY RAID

Former New York City Police commissioner Benjamin Ward said of the BATF's February 28th raid on Mount Carmel, "They did it backwards. The accepted way is to talk first and shoot second." [197][108] Dr. Robert Cancro, one of the outside experts the Justice Department asked to review BATF and FBI's actions, wrote, "David Koresh asked why they did not serve him the warrant directly rather than through an armed assault. . .The issue is why was this not considered and evaluated more thoroughly and with adequate behavioral input." (JDR:Cancro:2)

One explanation is BATF's negative attitude towards what Time called "determined and fanatical groups." BATF spokesperson Jack Killorin declared, "We've gone about them in a number of different ways--ruse, ambush, siege and talk. In almost every one we lose law enforcement officers." [198][109] That BATF had no intention of allowing Koresh to cooperate is evidenced by Aguilera's rejection of Koresh's invitation, via gun dealer Henry McMahon, to look at his guns. Also, Marc Breault writes in his book that in December, 1992, Aguilera told him "that he felt Vernon was a lunatic and needed to be put away." [199][110]

The Treasury report admits that BATF planners decided immediately that their only options were a siege (surrounding Mount Carmel until residents surrendered) or a "dynamic entry" or paramilitary raid. (TDR:38-43) Below are the highly questionable reasons BATF rejected both a simple search and a more complicated but less dangerous siege and went forth with a paramilitary raid by 76 heavily armed agents.

a. Paramilitary Raids Are Preferred BATF Modus Operandi

As BATF Director Stephen Higgins told the House Judiciary Committee, BATF "Special Response Teams" (SRTs) had made hundreds of similar "activations" during the last several years. Such "dynamic entry" raids--armed agents busting down doors and otherwise smashing into unsuspecting individuals' homes and businesses with barely a moment's notice of "search warrant"--are clearly BATF's preferred modus operandi. The Gun Owners of America video tape Koresh showed Agent Rodriguez criticized these Gestapo-like tactics.

Two BATF top planners were noted for their raid and siege experience. Dallas Special Agent-in-Charge Ted Royster had led many high profile raids, including the destructive and controversial raid on John Lawmaster's home. [200][111] And William Buford, Resident Agent-in-Charge of the Little Rock BATF office, had planned and participated in the 1985 siege of the white supremacist group "The Arm and Covenant of the Sword." (TDR:38) SAC Chuck Sarabyn, who would become co-commander of the February 28th raid, may have favored such a raid because it would be the first opportunity to test the "National Response Plan" which he had "played a significant role in drafting." This would also be only the fifth time more than one Special Response Team had been used in an operation. (TDR:62) BATF grandiosely named the operation "Operation Trojan Horse," because the agents were to be hidden in cattle trailers. (TDR:Appendix B:40)

b. Cult Busters Advised Against Simple Search

Considering BATF's bias in favor of paramilitary raids, it is easy to

understand why BATF investigators Davy Aguilera and Bill Buford accepted so uncritically cult buster "scare stories," which reinforced their commitment to such a raid. Marc Breault writes in his diary entry of January 8, 1993, that "ATF" asked him, "If Vernon received a summons to answer questions regarding firearms, would he show up?" Breault answered, "No way." ATF asked, "If the good guys came with a search warrant, would Vernon allow it?" Breault answered; "If Vernon were not expecting it, no. If Vernon had prior warning, yes. He'd have time to shift all the firearms. . . There is a considerable amount of danger because Vernon feels that since he is Jesus Christ, he has already died. Therefore he can skip that phase of things. Since he does not have to die, there is no resurrection and therefore he may well feel he can start shooting beforehand." [201][112]

Breault similarly had informed the U.S. Embassy in Australia in February, 1992, that "there would be a shootout with authorities if they attempt to enter the cult's Waco property to take away any of the children now living there, or investigate living conditions." [202][113] This had not happened when social workers and local sheriffs visited Mount Carmel, yet BATF heeded Breault's questionable advice. Doubtless, Rick Ross also was telling BATF investigators what he told the Waco Tribune-Herald--that Koresh was violent and dangerous.

The "deprogrammed" David Block told agents that he "left the cult group because (Koresh) would always remind them that if they were to have a confrontation with the local or federal authorities, that the group should be ready to fight and resist." The Treasury report admits, however, "as far as former cult members knew, Koresh had not specifically trained his followers to repulse law enforcement officers or other visitors perceived to be hostile." (TDR:45)

This cult buster-induced belief that Koresh would not cooperate was communicated all the way to the top. Chief of Public Relations Jack Killorin claimed after the raid that Koresh was "sworn to resistance" and it was only prudent to have firepower. [203][114] And David C. Troy, chief of BATF's intelligence division, told a House Ways and Means subcommittee: "Once we had probable cause (to arrest him), he was so kinked up over government. . . that he would not come off the compound. . . And the people behind Vernon Howell (Koresh's birth name) were just as violent." [204][115]

c. Cult Buster Mass Suicide Scare Stories

The Treasury report mentions a legitimate reason for not implementing a siege--the Branch Davidians might destroy evidence. However, it goes into greater detail about a more questionable reason--former Branch Davidians' concerns about the possibility of mass suicide should the government attempt a siege. Not surprisingly, Marc Breault promoted this idea "most forcefully." (TDR:46) In fact, the Treasury report admits, "The planners ultimately rejected the siege option mainly because the intelligence obtained in January from former cult members. . . Most significantly, they noted the distinct danger that Koresh would respond to a siege by leading his followers in mass suicide." (TDR:141) Doubtless, Rick Ross promoted his "Jim Jones" comparison.

d. Shoddy Intelligence

BATF planners decided they could only consider a siege if Koresh was arrested away from Mount Carmel when he was out jogging or in town. Agents believed that without Koresh's leadership, the other members would offer little resistance to a BATF search of Mount Carmel. The Treasury report admits agents received inaccurate information from social worker Joyce Sparks and undercover agent Robert Rodriguez that

Koresh rarely left Mount Carmel. It also admits that the agents at the undercover house could not identify who left and entered by automobile. (TDR:136-140) Only after the raid did BATF receive information that Koresh had left Mount Carmel a number of times during December, January and February, 1993. BATF did attempt to convince Texas Department of Protective and Regulatory Services to summon Koresh to town for a meeting so that BATF could arrest him, but they refused to become involved. BATF also tried obtain a Texas arrest warrant for Koresh for sexual activities with a young girl, but that fell through when the girl refused to testify. (TDR:64)

e. Publicity Stunt to Bolster BATF's Image

In early 1993, BATF was a beleaguered agency. Ronald Reagan and others had been calling for its abolition since the early 1980s. A newly elected liberal Democrat just might try to do it. The Waco Tribune-Herald was calling to find out why BATF wasn't doing something about the Branch Davidians weapons build up. And in mid-November, 1992, CBS's "60 Minutes" contacted BATF about an upcoming exposé about female BATF agents who charged routine sexual harassment and even attempted rape. The exposé, which aired January 10, 1993, included damning statements by BATF agents. Agent Bob Hoffman exclaimed, "the people I put in jail have more honor than the top administration in this organization." Agent Lou Tomasell said, "I took an oath. And the thing I find abhorrent and disgusting is that these higher-level people took that same oath and they violate the basic principles and tenets of the constitution and the laws and simple ethics and morality." A few weeks later, 15 black agents accused the agency of discrimination in hiring and promotion. [205][116]

Facing Congressional appropriations hearings on March 10, 1993, BATF leadership may have felt it needed some good publicity to illustrate its effectiveness, something like the sight of BATF agents arresting dozens of religious fanatics and displaying a big weapons cache. Any later story that the guns were found to be legal and that charges had been dropped would never go beyond the local papers. Mike Wallace reran this January episode May 23, 1993, and declared, "Almost all the agents we talked to said that they believe the initial attack on that cult in Waco was a publicity stunt--the main goal of which was to improve the ATF's tarnished image."

During the June 9, 1993, House Appropriations subcommittee hearings lawmakers grilled BATF Public Information Officer Sharon Wheeler to determine if BATF Washington or local offices had been concerned with "the BATF image and whether or not this operation would impact on that image?" (Committee members did not ask the same question of Wheeler's superior David Troy, who was also at the hearing.) Wheeler denied two reporters' contentions that when she called them for weekend phone numbers she had told them, "we have something big going down" on Sunday. She also asserted that she was told not to send out a press release "until we knew if there was significant things found in the compound, you know, evidence of violations." [206][117] The Treasury report contends it was not BATF, but a private ambulance driver who tipped off the local television station KWTX. Their cameraman inadvertently tipped off a Branch Davidian to the impending raid. (TDR:159)

f. Desire to Punish BATF Critic

Aguilera's February 25th affidavit asserts: "David Koresh stated that the Bible gave him the right to bear arms" and then showed undercover agent Robert Rodriguez a video tape which "portrayed ATF as an agency who violated the rights of gun owners by threats and lies." During the January, 1992 interview with Martin King for the Australian television

program "Current Affair," Koresh gave his opinion about guns: "This is not Europe, not where a country overthrows a bunch of people, takes away their weapons so the people cannot argue any issues. Guns are the right of Americans to have. Yeah, we've got a gun here and there. Most of the guns were sold. A lot of people say: 'He's got guns, that makes him bad, that makes him a cult.'" When asked if he would use a gun if "someone" trespassed, Koresh answered, "They come in here with a gun and they start shooting at us, what would you do? . . . Our constitution states every citizen in American has the right to rebuttal the government. Guns? Yes, we have guns." [207][118]

It may well be that the Branch Davidians perceived "secessionist" tendencies disturbed BATF--and later the FBI. Sheriff Harwell said, "They were like living in another little country out there. They had their property line and they were basically good people. All of 'em were good people. . . I don't know about Vernon Howell. I think he really believed he was what he told everybody he was, and I think he was probably sincere in everything that he taught. But the other thing that he did was to teach the philosophy that once anyone crossed that property line out there it would be just like someone invading the United States." [208][119] Columnist Joseph Sobran wrote: "We are already being told how threatening David Koresh is to society at large, when apparently all he ever wanted to do was to secede from it. And this, I think, is the real nature of a cult: its desire to withdraw. Even before its physical isolation, it has rejected the moral and cognitive authority of the larger society. This disturbs everyone who feels wholly at home in that society and dependent on it." [209][120]

[210]8. GOVERNMENT MULTI-TASK FORCE MAKES FOR "PARTNERS IN CRIME"

The Treasury report describes the "multi-task force" of federal, state and local authorities used to carry out the BATF's February 28th raid. While BATF agents from three Special Response Teams carried out the actual raid, support was provided by the National Guard, Texas Department of Public Service employees, including the Texas Rangers, and the McLennan County Sheriff's Department. (TDR:79) At the June 9, 1993, House Appropriations subcommittee hearings, BATF Associate Director Hartnett explained that a Drug Enforcement Agency team was on hand to disassemble any methamphetamine laboratory which might be found, something not mentioned in the Treasury report. He also said that the Immigration and Naturalization Service and the U.S Marshals Service were involved. [211][121]

The problem with such federal, state and local "multi-task forces" is that they make all participants defacto "partners in crime," should crimes be committed against citizens--especially if federal agents commit the crimes. National legislation and federal funding for state and local law enforcement ensure that many state and local authorities may not be very aggressive in preventing or investigating federal crimes against citizens.

The Treasury report states, "The Texas Rangers (were) deputized as U.S. Marshals for the criminal investigation and prosecution." (TDR:7) and "opened a formal homicide investigation" of the murder of federal agents by Branch Davidians. (TDR:116). (According to a Texas Rangers public affairs representative, they were deputized by the U.S. Attorney's office in Waco, Texas.) As we shall see, BATF and FBI interfered with Texas Rangers' attempts to conduct a complete and impartial investigation. After the fire, several Texas residents tried to file formal complaints with the Texas Rangers regarding what they believed to be the FBI murder of the Branch Davidians. Texas Rangers

and a representative of the Texas Attorney General told them that since all Texas Rangers investigators were deputized as U.S. Marshals, there was nothing that the state of Texas could do. [212][122]

[213]9. DUBIOUS DRUG ALLEGATIONS TO OBTAIN HELICOPTERS FREE

The 1878 posse comitatus law, Section 1385 of the U.S. code, states U.S. military forces and state national guards cannot be used as police forces against civilians. However, courts have given law enforcement wide leeway in using military and national guard equipment and facilities. As BATF Associate Director Hartnett told Congress, "We use the military all the time for support with reimbursement." [214][123] More recent modifications of the posse comitatus law (32 U.S.C. =15112 and 10 U.S.C. =15371) allow the military and national guard to provide "non-reimbursable" (i.e., free) support to civilian law enforcement if they are engaged in counter-drug operations.

The Treasury report states BATF wanted to use military training facilities and equipment at Fort Hood, and Texas National Guard aerial reconnaissance before, and diversionary helicopters during, the raid. "However, in the absence of a drug nexus, ATF was told by both the U.S. military and the National Guard that the assistance would be reimbursable." (TDR:213) To get that free assistance, BATF constructed drug allegations from extremely shaky and dated evidence.

Marc Breault had told BATF that Koresh claimed that after he took over Mount Carmel from George Roden, "he had found methamphetamine manufacturing facilities and recipes on the premises." Koresh told Breault he had asked the local Sheriff to take them away, but the Sheriff had no record of doing so. (TDR:30) Breault never alleged having seen such a lab in his years at Mount Carmel. Undercover agent Robert Rodriguez told BATF, "Koresh had told him that the Compound would be a great place for a methamphetamine laboratory because of its location." Also, one Branch Davidian had a "prior conviction for possession of amphetamines and a controlled substance" and 10 others had been either arrested or investigated for drug violations in the past. (TDR:212)

However, as revealed to Congress, BATF admitted it knew the identity of the individuals most likely responsible for building this lab. "Roden allowed others to stay on the property and pay rent. Convicted narcotics trafficker Donny Joe Harvey and his associate, Roy Lee Wells, Jr., were verified by the McLennan County Sheriffs Department as residing at the compound. Both Harvey and Wells are incarcerated." BATF also admitted that it knew the last Branch Davidian to be convicted on drug charges was Brad Branch, back in 1983. [215][124] Finally, the statement Koresh allegedly made to the agent may well have been made within the context of George Roden tenants' former activities.

On the basis of this shaky information, Army Lieutenant Colonel Walker, who advised BATF on obtaining "training or equipment or support in a counter-drug operation," recommended BATF solicit Texas National Guard services. [216][125] BATF convinced the Texas National Guard to do two overflights of the buildings to look for "hot spots" that might indicate drug laboratory activity. A hot spot was found but, since it could indicate construction, cooking or other activities requiring heat, "no official interpretation of the 'hot spot'" was provided. (TDR:213)

Given this dubious evidence, it is not surprising that in the month after the raid, BATF denied to reporters that it had used allegations

of a drug laboratory to obtain the helicopters. After press reports that BATF had obtained the helicopters under "false pretenses" angered Texas Governor Ann Richards, Hartnett sent her a March 27, 1993 memo to assure her that there had been sufficient evidence to invoke the drug "nexus" exception to the posse comitatus law and obtain free use of Texas National Guard helicopters.

[217]10. CHRONOLOGY OF FEBRUARY 28, 1993 BATF RAID

@ This chronology has been assembled largely from Appendix D of the Treasury Department report on Waco, other parts of the report and the February 28, 1993 "911" audio tapes.

7:30 am--BATF convoy arrives at Bellmead civic center.

7:45--KWTX television reporter and cameraman arrive nearby Mount Carmel.

8:00--Undercover agent Robert Rodriguez enters Mount Carmel for Bible study. --Raid Commander Chuck Sarabyn briefs ATF convoy at Bellmead Civic Center.

8:30--KWTX cameraman warns postman David Jones, a Branch Davidian, that a "shootout" is about to occur. Jones returns to Mount Carmel and warns Koresh.

8:45--Three Waco Tribune-Herald cars arrive nearby Mount Carmel.

9:05--Rodriguez leaves Mount Carmel, hurries to undercover house across the street, calls raid, Commander Sarabyn and tells him that Koresh knows BATF and National Guard are coming. Commanders Sarabyn and Philip Chojnacki and SAC Ted Royster decide to go ahead with raid.

9:10--Chojnacki calls BATF National Command Center in Washington and informs them operation is a go.

9:25--Sarabyn arrives at Bellmead, announces operation is to proceed, tells agents "Hurry. They know we're coming." ATF agents board cattle trailers.

9:29--Helicopters carrying Chojnacki and Royster are on the way to Mount Carmel to create a "diversion."

9:30--A long convoy of cars, vans and 3 cattle trailers heads towards Mount Carmel.

9:45--Cattle trailers enter drive way of Mount Carmel, followed by KWTX television vehicle.

9:47--Sarabyn and Chojnacki end cellular telephone contact. --Raid begins; helicopters and agents "taken under fire". --KWTX video crew takes cover behind bus.

9:48--Wayne Martin calls 911 to report 75 armed men are attacking Mount Carmel. "Attempts continue (19 times) to reach ATF. Contact is finally established via TSTC Patrolman '197' at 10:20 am."

9:55--Associate Director Hartnett and Director Higgins are informed agents are under fire.

10:03--911 Lieutenant Lynch calls back Mount Carmel after disconnection and talks continue. Martin complains about shooting from helicopters.

10:20--911 finally contacts ATF and Lieutenant Lynch helps Chojnacki and Royster negotiate cease fire.

10:34--Koresh calls 911, soon disconnects.

10:42--Koresh calls 911 again, soon disconnects.

10:46--Schneider and Koresh call 911 and discuss cease fire.

10:49--911 call disconnects. Lynch gives Koresh's cellular phone number to Royster who passes it to agent Cavanaugh at the undercover house.*

10:59--Lynch negotiates with Martin and Schneider on one line and Chojnacki and Royster on the other.

11:27--Cavanaugh finds telephone number on undercover house refrigerator door and calls into Mount Carmel and continues negotiations.*

11:30--Hartnett unilaterally requests FBI Hostage Rescue Team support.

11:39--Agents move in to pick up wounded and dead agents.

11:54--Ambulance moves in to pick up agents.

12:45pm Approx.--ATF agents physically assault KWTX cameraman taking pictures of dead agents.

12:37--Lynch gives Schneider Cavanaugh's phone number and direct contact is established.* Mid-afternoon--Branch Davidian Donald Bunds arrested as tries to return to Mount Carmel by car.

4:55--Agents fire on three Branch Davidians trying to re- enter Mount Carmel, Michael Schroeder killed, Delroy Nash arrested, Bob Kendrick escapes.

4:00-12:00--David Koresh gives KRLD and CNN radio interviews and tape of his sermon is played several times over KRLD. Four children leave Mount Carmel.

5:30--FBI Special Agent-in-Charge Jeffrey Jamar arrives at command post. --Royster holds first press conference.

10:00pm--Hartnett and FBI Hostage Rescue Team arrive via FBI HRT plane. FBI takes charge at 10:00 am March 1, 1993.@@* Seeming conflicts occur between accounts in Treasury report text and Chronology in Appendix D.

Diagram and Drawing from Treasury Department Report - Not to Scale
Drawing includes undercover house, the lake, Mount Carmel Center and hay barn. Altered to include concrete room, water tower, buried bus, missing room names.

[218]11. BATF USED EXCESSIVE FORCE TO SERVE WARRANT

BATF's executing search and arrest warrants upon the Branch Davidians with 76 heavily armed agents utilizing a plan which provided no opportunity for the Branch Davidians to cooperate peacefully ~~by~~ itself constituted an excessive use of force. As we shall discuss in the section on the Branch Davidians' defense, their attorneys can make a strong argument that BATF's excessive use of force alone gave the Branch Davidians the legal right to shoot back in self-defense.

a. Excessive Numbers of Agents and Weapons

During the June 9 House Appropriations subcommittee hearing, BATF Chief of Special Operations Richard L. Garner described the arms carried by 76 agents: every agent had a Sig Sauer 9mm semiautomatic pistol; 27 agents carried tactical carbine MP-5 9mm semiautomatics; snipers were equipped with .308 caliber high power sniper rifles; agents also carried 8 AR-15s and 12 shotguns. [219][126] Agents also carried "flash bang" percussion grenades. 9mm rounds in submachine guns are highly-penetrating rounds available only to law-enforcement special operations teams and the military, and are specifically designed to cut through body armor. James L. Pate alleges that it was not humanitarian concerns or negotiations that ended the hour-long assault, but the fact that agents ran out of ammunition. They had only 40 rounds left when they finally backed off. [220][127]

b. Evidence BATF Did Not Properly Serve Warrants

Nothing in Aguilera's affidavit indicated that Koresh or his followers would use force to resist service of search and arrest warrants. Nor did the Magistrate give the necessary explicit permission for such a "no knock" warrant which would permit agents to bypass giving notice that they were serving a search warrant. Title 18, U.S.C. 3109 states that an officer must give notice of his legal authority and purpose before attempting to enter the premises. Only if an officer is refused entry is it legal for him or her to use force to gain entry.

Before the trial there was much suspicion that BATF never properly served the warrants. BATF spokesperson Jack Killorin told USA Today, "We needed 60 seconds of them not being prepared and we would have neutralized the compound and gotten the children out." [221][128] However, 60 seconds is barely time for an agent to walk to the front door of a large building, knock, wait for an adult to answer the door and formally announce that he was there to serve a search warrant. What BATF had planned was more like a military search and destroy mission than any constitutional effort. News reports describe an armed attack. "According to witnesses, federal agents hid in livestock trailers as they drove up to the compound. As three National Guard helicopters approached, the 100 law officers stormed the main home, throwing concussion grenades and screaming 'Come out!' For a moment, there was no response. Then the shooting began. 'It was a large barrage of gunfire from several places in the house at once,' said Dan Mulloney, a KWTX-TV news photographer who followed the agents onto the compound." [222][129] Koresh's attorney Dick DeGuerin asserted Branch Davidians alleged, "these two cattle trailers roar up, and people start screaming out of the back of them, screaming at the tops of

their lungs, not anything like, 'This is a search' or 'We're agents' or 'Put up your hands' or anything like that. It was just screaming, yelling, like Marines storming the beach." [223][130] An FBI spokesman explained to a reporter why BATF agents would not have identified themselves, "you don't want to give these guys a chance to get their guns. In Waco, there was no announcement of who was there and the fact they're there for the lawful purpose of executing a warrant." [224][131] It is obvious from Koresh's 911 conversation that even though he had heard it was BATF that was about to raid him, and even though he answered the front door himself, a half hour after the raid he was still confused about who was attacking him and why. He told Lieutenant Larry Lynch of the Sheriff's office, alluding to past talks with the office, "We told you we wanted to talk. No. How come you guys try to be ATF agents?"

On the fourth day of the trial BATF Special Agent Roland Ballesteros, the first to arrive at the front door, took the stand for six hours. Ballesteros acknowledged that BATF planners had never had a plan for peacefully serving the search and arrest warrants. He said no agent had been designated to announce the purpose of the raid. "Basically, we all announced. We practiced knocking, announcing, and then going through the front door." Asked if he ever rehearsed a peacefully entry, he answered, "No, we did not." Ballesteros was armed with a 12 gauge shotgun, 9mm pistol, and a 38 caliber handgun. He and two other agents were also armed with a battering ram.

Ballesteros testified he saw Koresh in the doorway, and yelled, "Police, lay down!" He said Koresh answered, "What's going on?" He yelled back, "Search warrant, lay down." However, defense attorneys pointed out that this was the first time he had mentioned seeing Koresh in the door or announcing he was serving a search warrant. During his February 28, 1993 interview with the Waco police, his March 10th interview with the Texas Rangers, and a September 30th pre-trial hearing, he did not mention these facts. Ballesteros testified he had changed his story because during earlier testimony pain killers from a wound he suffered during the raid had dulled his memory.

What "jogged" Ballesteros' memory was a meeting with U.S. Customs agents who interviewed him as part of the Treasury Department's review of the raid. As a result of this interview, "He changed that version of the incidents. . . His Tuesday account of the early minutes of the bloody raid agreed with the account he gave customs agents." [225][132] Considering that the Treasury Department was interested in exonerating BATF, it seems likely that U.S. Customs agents "helped" Ballesteros remember a version more consistent with the Treasury Department's version of events. Two days later another BATF agent, Robert Champion, testified that agents had identified themselves as police with a search warrant--something he also did not tell Texas Rangers in March. When questioned by defense attorneys, Champion said the Texas Rangers had not specifically queried him about that issue. [226][133] Branch Davidians and their attorneys see Ballesteros and Champion's new testimony as one more example of a massive government coverup.

[227]12. ALLEGATIONS BATF AGENTS SHOT FIRST

The Treasury report describes a slightly different version of events than Ballesteros' version: "Koresh appeared at the front door and yelled, 'What's going on?' The agents identified themselves, stated they had a warrant and yelled 'freeze' and 'get down.' But Koresh slammed the door before agents could reach it. Gunfire from inside the Compound burst through the door. The force of the gunfire was so great

that the door bowed outward." (TDR:96) Branch Davidians tell the opposite story: Koresh told BATF he wanted to talk and agents started shooting at him, hitting the front door. (Note that the front door was actually a set of two doors, not a single door.)

a. Agents Expected A "Shootout"

The Branch Davidians learned of the impending raid when KWTX camera man James Peeler asked directions of Branch Davidian David Jones, who was driving his mailman's truck. (Something which would BATF would not reveal to the public until six months after the raid.) Two slightly different versions of what Jones told Dick DeGuerin about the incident confirm the idea that agents were actually expecting a shootout. According to a news account, DeGuerin said Peeler told Jones, "Well, you better get out of here because there's a National Guard helicopter over at TSTC and they're going to have a big shootout with the religious nuts." [228][134] According to the Treasury report, Jones told DeGuerin that Peeler told him there were going to be "60 to 70 TABC (Texas Alcohol Beverage Commission) guys in helicopters and a shoot-out would occur." (TDR:85) Since KWTX's initial information came from a private ambulance driver working with BATF (TDR:189), BATF agents' expectations of a shoot-out were indirectly transmitted to the Branch Davidians.

Moreover, the morning of the raid, many agents read the Waco Herald-Tribune's February 27th story about the Branch Davidians and raid co-commander Chuck Sarabyn discussed the article with them during a briefing. (TDR:82) The story was filled with cult buster accusations that the Branch Davidians were dangerous fanatics. Finally, at the trial, BATF agent Ballesteros admitted that BATF agents had been briefed that they would encounter 20 to 30 or more "Mighty Men." He said, "We anticipated we would be met with force." [229][135]

b. Over Sixty Agents Knew Branch Davidians Were Warned of Raid

After Jones discovered that a raid was imminent, he rushed back to Mount Carmel and told Koresh. Koresh then told Rodriguez that he knew "ATF and National Guard" were coming and Rodriguez hurried across the street and called raid co-commander Chuck Sarabyn. After consulting with co-commander Philip Chojnacki, Sarabyn decided to go forward with the raid anyway and dashed out to the staging area shouting, "Get ready to go, they know we're coming!" and "Koresh knows the ATF and National Guard are coming!" (TDR:91) "Over sixty agents who heard Sarabyn on the day have since recounted" they heard him given these warnings. (TDR:195) On top of the propaganda they had absorbed about the Branch Davidians' alleged ferocity, this information must have unnerved many agents.

c. Agents Confused by Poor Planning

Besides expectations of a "shootout" and knowledge that the Branch Davidians knew they were coming, obvious flaws in the planning may have heightened agents' anxiety. According to the Treasury report, there had never been a contingency plan for bad weather, the loss of surprise, armed resistance or retreat. The commanders of the raid were in a helicopter and a cattle truck where they could not communicate effectively with agents. Two-way radio communications quickly broke down between agents. (TDR:143-156) The Houston Post wrote, "Unless you have a very disciplined group, you can expect all hell to break loose once any shot is fired; and according to Charles Beckwith, a retired Army colonel and founder of the military's anti-terrorist Delta Force, the ATF's raid was 'very amateur.'" [230][136]

d. Branch Davidians Did Not Use "Tactical Advantage"

Despite an excellent opportunity to shoot at oncoming vehicles--perched as they were in a large building on a hill with an excellent view of all oncoming vehicles-- the Branch Davidians did not do so. Justice Department outside expert Alan A. Stone commented, "The BATF investigation reports that the so-called 'dynamic entry' turned into what is described as being 'ambushed'. As I tried to get a sense of the state of mind and behavior of the people in the compound the idea that the Branch Davidians' actions were considered an 'ambush' troubled me. If they were militants determined to ambush and kill as many ATF agents as possible, it seemed to me that given their firepower, the devastation would have been even worse. . .The ATF agents brought to the compound in cattle cars could have been cattle going to slaughter if the Branch Davidians had taken full advantage of their tactical superiority." (JDR:Stone:18-19)

Agent Ballesteros testified that BATF was "ambushed" because the Branch Davidians didn't shoot at them until they were up close to the compound. Needless to say, this is a rather nefarious way of describing what was more likely their prudently waiting to see if BATF's intentions were violent. Defense attorney Dan Cogdell dismissed the theory BATF was "ambushed" by dozens of heavily armed Davidians. "If there were 46 individuals that used fully automatic weapons we wouldn't have four agents dead, we'd have 100 dead," said Dan Cogdell [231][137] In fact, "another Branch Davidian survivor who asked not to be named acknowledged that some people inside began to return fire: 'People were running around everywhere, asking if anybody had any guns. Nobody had any handy. Most of what we had was new, still in the box.'" [232][138]

e. David Koresh's Allegations

On the evening of the February 28 raid Koresh described the first shots to a KRLD radio reporter: "I begged these men to go away. I had wives and I had children. But they didn't listen. . .They came out. I was at the front door. I had the front door open so they could clearly see me. And then what happened was, I told them, I said 'Get back. There's women and children here. Get back. I want to talk.' and all of the sudden 9mm rounds started firing at the front wall." The reporter asked, "Was that when you got wounded?" Koresh answered, "No. They hit the metal doors which deflected them. I had my face out where they could see me. And then I moved back and all of a sudden the guy started firing." That evening Koresh told CNN, "They fired on us first. Like I said, they were scared."

Deceased Branch Davidian Steve Schneider's attorney Jack Zimmerman says of Koresh's version, "That was confirmed by a number of people who heard him say that" and that ATF's version "is a lie." [233][139] One evidence of this is that just 15 minutes after the raid began, Wayne Martin told 911 Sheriff's Deputy Larry Lynch, "I have a right to defend myself. They started firing first." According to a news report, "On his way to a court hearing Wednesday, cult member Livingston Fagan, who left the compound Tuesday, told reporters ATF agents fired the first shots--a charge the ATF has denied." [234][140]

f. Agent Ballesteros' Previous Allegations BATF Shot First

In earlier testimony to Waco police and Texas Rangers Agent Ballesteros said he thought that agents shooting at the Branch Davidians' dogs fired the first shot. At the trial, he changed his story and testified that the Branch Davidians did so, shooting through the front door. Again, he blamed medication for impairing his memory. [235][141] (The only non-agent to testify that the Branch Davidians shot first was Waco Tribune-Herald reporter Marc Masferrer, who was

about 300 yards away at the time. He testified that he thought the first shots came from inside the building. A defense attorney commented, "At that distance, those people would look like ants." [236][142])

g. Photos of Agents Firing Before Bullet Holes Appear in Front Door

Waco Tribune-Herald photos introduced at the trial show agents firing before any holes can be seen in the front door. [237][143] This certainly contradicts BATF agents' story that the Branch Davidians fired first, out through the front door and that "the force of the gunfire was so great that the door bowed outward," as the Treasury report puts it.

h. Evidence Gun Shots Were Fired Inward through the Front Door

Contrary to BATF and Treasury assertions the Branch Davidians fired out through the door, Branch Davidians claim the first shots were fired at David Koresh and entered inward through the front door. Attorney Jack Zimmermann, who had an opportunity to examine the hollow metal front doors before the fire, stated that Branch Davidians would have fired out through windows, not the door. "What would cause that front door to be peppered with holes like that?" [238][144] The door was first rammed by tanks and then burned in the fire. Nevertheless, at the trial a Texas Ranger testified they did find one of the two front doors. One news report said the door was "crumpled, bullet-pocked"--but did not mention in which direction the bullets had entered. The Texas Ranger said "that while other doors and many metal objects had survived the fire, he believed that the missing door was destroyed in the intense heat." When asked if FBI or BATF agents had access to the site immediately after the fire, he answered, "I'm sure they were both out there." [239][145] The possibility that BATF or the FBI destroyed this evidence after the fire must be investigated.

i. Unreleased BATF Video Tape

Waco television station KWTX had not yet set up their camera when the first shots were fired. According to an Associated Press wire press story, "ATF associate director Conroy said a video tape taken from an ATF helicopter during the raid may help clarify the question of who fired the first shots in the deadly shootout that left four ATF agents and at least two cult members dead." Supposedly BATF was operating more than one video camera, but it has refused to release any tapes. [240][146]

U.S. District Court Judge Walter A. Smith, Jr. ordered that all BATF audio and videotapes be preserved and presumably these will be released during the trial of the eleven Branch Davidians. [241][147] However, "the judge stopped short of ordering what the lawyers for Koresh and his lieutenant, Steve Schneider, had requested, which was that they be held by the court and not federal officials." [242][148] (Judge Smith is the judge who will be presiding over the Branch Davidian trial.) If the government does not release these tapes during the trial, attorney's for Branch Davidians suing the government may subpoena them, or other individuals may seek to obtain them under the Freedom of Information Act.

j. Audio Analysis from Video Tapes

Even if video cameras were not focused on the scene of the first shots as they were fired, the audio portion of the videotapes can still provide valuable information, such as, who shot first, whether a "flash-bang" grenade was thrown through a window, and whether there was shooting from helicopters. Because the audio comes from video