# NLWJC - Kagan

# Counsel - Box 020- Folder 006

# [Theories About the Incidents At Ruby Ridge and Waco From Private Individuals and Groups][2]

tapes, the exact location from which the recordings were made will be easy to gauge and therefore the exact "geometry" of many of the echoes will be ascertainable with great accuracy. The sounds of shooting from inside the building, as opposed to from outside it, will be significantly different and provide useful evidence. Today IBM-compatible sound-analysis software is available which will allow anyone to do such analysis with great precision. [243][149]

k. Law Enforcement Allegations

James L. Pate writes that two law enforcement sources confirmed to him that BATF shot first, Texas Ranger "sources," and "federal law enforcement sources." The latter said that a BATF agent had an accidental discharge as he got out of the cattle trailers in front of Mount Carmel. He wounded himself in the leg and cried out, "I'm hit!" Everyone then opened fire, thinking it was a signal to initiate fire. Pate also states that Steve Willis, one of the BATF agents killed in the raid, was assigned to "take out" Koresh if necessary and did fire an MP5 SD submachine gun at him from the passenger side of the lead pickup truck. [244][150] While this story may sound far fetched, it is certainly one of many allegations that must be explored by an independent investigator.

[245]13. ALLEGATIONS AGENTS SHOT INDISCRIMINATELY AND FROM HELICOPTERS.

The Treasury report states that BATF agents "returned fire when possible, but conserved their ammunition. They also fired only when they saw an individual engage in a threatening action, such as pointing a weapon." (TDR:101) However, Branch Davidians claim BATF agents fired indiscriminately, including through walls, and that helicopters sprayed the building with bullets. News video tapes clearly show agents exercising little control over their firing as they fire over vehicles with little or no view of what they were shooting at. Both BATF Director Higgins at an April 2nd Congressional hearing and Treasury Secretary Bentsen during the September 1993 Treasury Department press conference denied allegations that agent fired indiscriminately. [246][151] BATF may allege that any firing down through roofs was done by Branch Davidians firing from the building tower or from the water tower.

a. Bullet Evidence in Doors, Walls and Roof

Branch Davidians, and attorneys Dick DeGuerin and Jack Zimmerman who visited Mount Carmel during the siege, insist that there was extensive evidence that BATF agents shot indiscriminately through Mount Carmel Center's front door, walls and roof. They were very concerned with preserving this evidence of an out-of-control assault.

The New York Times reported, "both lawyers clearly believed that helicopters flying over the compound during the raid had fired into upper floors of the main building from above." ATF Spokesperson Jerry Singer denied that the helicopters had flown over the compound or fired upon it. "The helicopters did not overfly the compound on Feb. 28 and I have no information that anyone fired from the helicopters." However, Jack Zimmerman stated, and Dick DeGuerin concurred, "an expert will be able to tell from the angle of the trajectory plus the pattern whether there are entry or exit holes. If it's in the ceiling and it's clearly an exit hole, it had to come from above. How else could it have come in?" [247][152] Except for half the front door, all this evidence was destroyed by the April 19 tank rammings, the fire, and the bulldozing of still burning walls into the rubble.

b. Wayne Martin Allegations on 911 tape

Wayne Martin and an unidentified Branch Davidian complain frantically to Lieutenant Lynch 15 minutes after the start of the raid about the continuing gun fire from BATF agents, even as they themselves withhold fire. Nearly continuous gunfire can be heard in the background of the tape.

Martin: Another chopper with more people; more guns going off. They're firing. That's them, not us.

Unidentified Davidian: There's a chopper with more of them. Lynch: What!?

Davidian: Another chopper with more people and more guns going off. Here they come!

Lynch: All right, Wayne, tell . . .

Davidian: We're not firing. That's not us, that's them!

Lynch: Okay. Tha . . . All right. Are you, are you ready to come out and give up? Are you ready to terminate this Wayne? Martin: We want to cease fire! We'll stop!

Lynch: Standby. (he then tries to get in touch with BATF radio van. There is more sound of gunshots)

Lynch: Sta . . . Who's firing now?

Davidian: They are!

Wayne: They are!

Lynch: All right. Standby. I'm tryin' to reach 'em. Stand. Don't return fire, okay?

Davidian: We haven't been.

Lynch: What?

Davidian: We haven't been. (sounds disgusted)

During the June 9, 1993, House Appropriations subcommittee hearing, an FBI agent gave a staff member an excerpted tape of the "911" calls between Lieutenant Larry Lynch and Branch Davidians David Koresh and Wayne Martin. [248][153] The tapes, which the Waco Police Department sells to the public, were edited into a 30 minute tape. The FBI claimed the tape was a "sampler of voice changes." Lawmakers were led to believe the tape was verbatim. However, Waco police said the tape gave a "false impression of how the events occurred." [249][154] If one compares the transcript of the tape in the hearing record to the Treasury Department's chronology, one finds that the section where Wayne Martin complains about helicopters shooting at him has been moved towards the end of the tape, which would have been well after the helicopters withdrew from the scene. This might be evidence that someone wanted to discredit Martin's claims and cover up BATF's illegal actions.

c. Agents Shot from Undercover House

The first days of the Branch Davidian trial confirmed what has been long suspected--that agents in the undercover house 300 yards from Mount Carmel were firing at the building. A Texas Ranger testified

they had collected 40 used shell casings found in and around the undercover house. [250][155] The Texas Ranger also said that "friendly fire" could have struck the driver's door of one of the BATF pickup trucks that pulled cattle trailers on February 28th. [251][156]

d. Catherine Matteson Allegation

"I seen (sic) those trailers drive up. I was downstairs. I thought it strange, but I figured they were delivering firewood or something. I picked up the Sunday paper and went upstairs to my room, and started reading. When next, bullets came through the roof. I could hear the helicopters overhead, I got under my bed." [252][157]

e. Children's Pictures of Bullets Through Roof

A story about psychologist Bruce D. Perry's interviews with Branch Davidian children who left Mount Carmel after the raid mentions, "Still another child created a picture of a house beneath a rainbow. When Perry asked, `Is there anything else?' the child calmly added bullet holes in the roof. That was an allusion to the Feb. 28 shootout with federal agents that marked the beginning of a 51-day standoff and left the compound near Waco scarred with bullet holes." [253][158] A May 19, 1993 Newsweek story shows this picture with the caption, "A girl drew her home's dotted roof. `Bullets,' she said."

f. Questions about Deaths of 6 Branch Davidians

In opening statements on January 12, 1994, lead prosecutor U.S. Assistant Attorney Leroy Jahn said, "On February 28 the occupants of Mount Carmel (the cult compound) not only killed ATF, they killed their own. People who were too wounded to fight were put out of their misery." [254][159] Prosecutors are referring to the deaths of Peter Hipsman, Winston Blake and Koresh's father-in-law, Perry Jones. The Treasury report alleges Peter Hipsman received a number of allegedly non-fatal wounds and was "later killed by a cult member who shot him at close range in the back of his skull--an apparent mercy killing." (TDR:101) It alleges Winston Blake's death by a shot to the head from two to three feet was from a "cult member." (TDR:104) However, it describes no other wounds. Neither does it describe other wounds to Perry Jones, who it states committed suicide with one shot to the mouth. (TDR:101) However, Rita Riddle, who was at Mount Carmel during the BATF raid, stated Jones was shot in the stomach by bullets piercing the building walls. [255][160]

If these individuals did commit suicide or were shot in mercy killings, it may have been because they believed that the BATF raid was in fact the beginning of a prophesized government massacre. They may have wanted to die quickly rather than suffer before being killed by the "Babylonians." BATF retains direct responsibility for their deaths.

The Treasury report conflicts with statements by Branch Davidians that some dead members were not even armed at the time of the attack. Brad Bailey and Bob Darden write that the "official version"--which agents are not supposed to discuss--is that Peter Gent was carrying a gun on top of water tower, shot Steven Willis, and was then shot by a sniper--"possibly Rodriguez"--from the undercover house. They note that the government denies Gent was shot from a helicopter. [256][161] However, attorney Dick "DeGuerin recounted how witnesses reported Gent was working, unarmed, in the water tower. `He was scraping the sides of the tank. There was very little or no water in it. He heard all the noise, came up and stuck his head out to see what was going on and he was shot through the heard. He fell within the water tower onto a platform.'"

Branch Davidians also claim Jaydean Wendell had just finished nursing her baby when a bullet shot from a helicopter came through the ceiling and penetrated her skull, killing her. [257][162] The New York Times repeated Rita Riddle's allegation a woman had been shot in her bed. [258][163] The Treasury report offers no explanation for Jaydean Wendell's death from a distant shot by agents. Michael Schroeder, who was trying to return to Mount Carmel the afternoon of February 28, was shot six times, several times in the back. (TDR:104) More details about all these deaths may emerge during the trial.

[259]14. ALLEGATIONS FRIENDLY FIRE INJURED OR KILLED SOME AGENTS

BATF Chief of Intelligence David Troy told the press that "in the first two minutes, 16 agents were injured and four were killed." [260][164] It is certainly possible that in those first minutes terrified agents firing wildly from the ground and from helicopters injured and killed some of their own. During the trial a defense attorney asserted agents firing from the undercover house could also have killed or wounded some agents. [261][165]

a. Two Different BATF Versions of Where Two (or Three) Agents Died

The Treasury report states two teams of agents climbed the roof to Koresh's second floor living quarters--a bedroom on the west side and allegedly an arms room on the east side. Agents Conway LeBleu and Todd McKeehan "were to enter Koresh's bedroom from the west side of the roof." (TDR:98) They were killed, but the report does not explain whether it was on the roof or inside the bedroom, who killed them, from what angle the bullets came, what kinds of guns killed them [262][166] and how their bodies were removed from the roof or room. During the trial BATF Agent Petrilli said that agents climbed to the roof and removed LeBleu and McKeehan's bodies from it. [263][167]

The Treasury version of two agents killed near or in the bedroom is substantially different from the version BATF originally released, which held that three agents were killed in the arms room. [264][168] The report admits, "Contrary to some publicly disseminated reports, none of the agents that entered the armory were killed." (TDR:100) The fact that BATF changed its story has given rise to speculations BATF is trying to cover up that McKeehan and LeBleu were killed by friendly fire, either from helicopters, ground fire, or agents shooting from the roof into the armory. The choppily edited KWTX video tape [265][169] of the entry into the arms room shows an agent throwing a device into and then firing into the room after three agents enter. Some claim this firing really killed the two agents; some claim it killed all three in the arms room, as BATF originally told news reporters.

However, the Treasury report claims that the agents threw the device into the window before entering and does not mention the agent firing into the room. "At the arms room, Agent Jordan managed to `break and rake' (i.e. break the window and clear glass shards) the window and Agent Buford threw a distraction device into the room. Buford, Constantino and Jordan entered. Inside, Agent Buford saw a person armed with an assault rifle backing out of a doorway in the far left corner of the room. That individual began firing into the room from the other side of the thin walls." Buford was shot twice in the upper thigh and Constantino provided cover as Buford and Jordan escaped the room. "As Constantino was deciding whether to hold his position or make a run for the window, a cult member entered the room aiming an assault rifle at him. He fired two or three shots at Constantino.

Constantino returned fire and the man fell." (TDR:98-100) There is no mention of whether Constantino was in or out of the room when he shot.

Some of this confusion was clarified on February 25, 1994 when Agent Constantino testified at the Branch Davidian trial. He said that a portion of the bullet removed from Agent Jordan was 9mm "hydroshock" bullet like his own and acknowledged "it's possible" he may have shot Jordan. He did not know if a ballistics test had been done to determine if the bullet was from his gun. [266][170] More investigation of this incident and a careful study of the full KWTX videotape of this incident remain necessary.

b. "Federal Sources" Admit Evidence Exists

The April 5, 1993 Newsweek reports, "A federal source involved in the Waco situation says that `there is evidence that supports the theory of friendly fire,' and that during the assault "there was a huge amount of cross- fire." [267][171] Another highly placed federal source told James L. Pate "about half of ATF casualties in the raid apparently resulted from `friendly fire'." [268][172]

c. Agents Allege Friendly fire

According to the New York Times, "One agent said that some people involved in the raid believed that some agents had been hit by so-called friendly fire, although the agent and others said they knew of no evidence to support that belief. The agency has strongly denied the possibility that any agents were wounded by other agents." [269][173] During January 25, 1994 trial testimony both Agents Constantino and later Agent Buford admitted that they suspected or had heard of friendly fire incidents. [270][174]

[271]15. BATF INTIMIDATION OF THE PRESS

BATF agents and officials were originally convinced that the press had purposely tipped off the Branch Davidians. They accused KWTX reporter John McLamore and cameraman Dan Mulloney of making a deal with the Branch Davidians that they would tip them off if they were allowed to hide in a tree and tape the raid. [272][175] Some BATF agents and families accused the publisher of Waco Herald-Tribune of being a "murderer" for running his series on the Branch Davidians, despite BATF requests to hold it off until after the raid. [273][176] Later they blamed Waco Tribune-Herald reporter Mark England because undercover agent Rodriguez heard a Branch Davidian tell Koresh "England" was on the phone just before he learned of the raid.

On March 17, 1993, BATF agent John T. Risenhoover filed a lawsuit claiming that an unnamed Waco Tribune-Herald employee called David Koresh and warned him about the impending BATF raid. Risenhoover, who was wounded in the ankle and hip, sought damages for hospital costs and mental anguish. According to the Treasury report, BATF agents had tried to convince the newspaper not to publish their expos=82 of the Branch Davidians until after the raid and mistakenly thought they had an agreement to that effect. (TDR:69) Risenhoover's lawsuit also claimed the newspaper reneged on an agreement to withhold its series on the Davidians until BATF completed its investigation. One assumes this is something higher-up BATF officials would have to have told Risenhoover. However, the editors denied ever making such an agreement, and SAC Chojnacki was very angry or "hot," because editors said they were unconcerned about how their series would affect raid plans. (TDR:71) BATF immediately distanced itself from Risenhoover's

lawsuit. "This is strictly between the agent and the newspaper," said BATF spokeswoman Sharon Wheeler. [274][177] However, many suspect that this was just part of a broader government effort to intimidate the press and the media.

[275]16. BATF COVERUP

The Treasury Department report admits only that BATF commanders tried to cover up their decision to go ahead with the raid despite the loss of surprise, and that several officials disregarded evidence that they were covering up. Below we list evidence that this admitted coverup is but one of many.

a. Dubious Allegations about Koresh Statements

Undercover agent Robert Rodriguez alleged in the second, March 5, 1993 affidavit that when Koresh learned of the impending BATF assault he said to Rodriguez, "Neither ATF or the National Guard will ever get me. They got me once, and they will never get me again." However, neither the BATF or the National Guard had ever arrested or "gotten" Koresh before, so this statement would seem to be either a fabrication or a misunderstanding of a Koresh statement.

b. Unverified Reports of Machine Gun Fire and Grenades

The Treasury report alleges "unrelenting automatic and semiautomatic weapons fire" from the Branch Davidians. (TDR:101) However, according to Paul Blackman, "firearms experts who have heard videotapes of the incident have heard no such regular rapid fire." [276][178] Also, news reports state, "Officials said today that two of the wounded agents were hit by fragments of hand grenades lobbed from the compound." [277][179] Again, we will not have certain evidence until the government releases all audio and video tapes. We do not know if it is possible to distinguish between BATF "flash-bang" grenades and explosive ones.

c. False Report Members Try to "Shoot their Way Out"

At 4:55 p.m. on February 28 Branch Davidians Michael Schroeder, Delroy Nash and Woody Kendrick together approached Mount Carmel in an effort to re-enter it. They came upon BATF agents Dyer, Brigance and Appel who were moving away from the hay barn and towards the evacuation point. The agents claim that when they identified themselves, the three shot at them and the agents returned fire. (TDR:111, Appendix D:19) Schroeder was shot six times but escaped into the brush where he died. His body was not recovered for several days. Nash was arrested and Kendrick escaped; he was arrested a few days later. Initially, BATF told the press these individuals were shot trying to shoot their way out of Mount Carmel. BATF's original, inaccurate story has raised suspicions that BATF agents are trying to cover up an improper attack on the three Branch Davidians. Evidently, BATF never adequately corrected this story. As late as April 20, the Washington Post reported in a sidebar, "Sunday, Feb. 28. . .6 p.m. Three cult members storm out of the compound." [278][180] During the trial, Bob Kendrick and Delroy Nash, who were with him at the time, will present the Branch Davidian's side of the story about their meeting with federal agents near the "hay barn."

d. BATF Denies Branch Davidians Captured and Released Four BATF Agents

Dick DeGuerin and Jack Zimmerman assert that four BATF agents were

captured inside the compound in the gun battle, disarmed, then released during a cease-fire. "They had their arms up, threw down their guns, and were taken into custody. That much is clear from the videotape. Their release and the entire cease-fire was a suggestion of the Branch Davidians." Waco television video tapes of the raid show people coming out of the compound with their hands up, but, according to news reports "it was not clear whether the people had been caught in the crossfire or had come from inside the compound." However, BATF spokesperson Jerry Singer "denied that agents of the bureau were captured and then released. `No,' he said, `It did not happen.'" [279][181]

However, during the June 9, 1993, House Appropriations subcommittee hearing, McLennan County Sheriff's Lieutenant Larry Lynch mentioned his negotiations with Wayne Martin regarding "ATF wounded." "I still had Wayne on the line and was working with Wayne to get ATF into the--back into the compound to get their wounded. . .I would talk to Wayne and get Wayne's assurance that there would not be firing, that ATF was coming in to retrieve their wounded." [280][182] Perhaps BATF prefers to consider its agents "wounded," rather than "captured." However, if government- issued weapons had been found after the fire, it would support the Branch Davidians' contention and show that BATF told yet another lie. We do not know if such guns were found.

e. BATF Takes Gun Dealer McMahon Into "Protective Custody"

On March 1, 1993, BATF agents took custody of gun dealer Henry McMahon and his woman friend Karen Kilpatrick who had recently moved to Florida. In September, 1993, Dick DeGuerin told the Freedom of Information Foundation media panel on Waco: "They told these two people they were in danger from Branch Davidians who were not inside Mount Carmel who might try to kill them and convinced them to ask for protective custody. Mr. McMahon and his friend soon realized they'd been tricked into asking for protective custody but ATF flew them to Oregon. . .flew them down to Waco. The purpose of that was to prevent you from talking to them." [281][183] In late April, 1993, McMahon and Kilpatrick were interviewed on a Pensacola television show "Lawline." They stated that during these weeks BATF agents tried to keep them away from both the FBI and the press. [282][184]

James L. Pate alleges that BATF agent Davy Aguilera lied when he stated that McMahon had referred to Koresh as "my preacher" and when he alleged McMahon tried to hide from him the fact that Howell and Koresh were the same person, allegations repeated in the Treasury report. (TDR:26, Appendix D:5) Pate writes: "Interviewed by phone about the Treasury report's claims, McMahon told SOF that he and his girlfriend/business partner Karen Kilpatrick informed Aguilera truthfully that Koresh was `a' preacher, not their preacher. `We were never members of that church-- never went to a single church service out there,' Kilpatrick told SOF. . .As for properly identifying Koresh to the ATF, McMahon said gun dealers are required to check drivers' licenses for identification on paperwork documenting gun purchases. McMahon did so, using a Texas driver's license for identification on paperwork identifying the buyer as Vernon Wayne Howell." Knowing Koresh had changed his name, McMahon wrote "in parentheses after Howell's name on the ATF yellow forms: `AKA David Koresh.' Henry McMahon wasn't trying to hide anything from anyone and Aguilera knew this. But Aguilera lied. . .in an effort to discredit McMahon's knowledge of ATF wrongdoing." [283][185] McMahon has not been charged with conspiracy to manufacture machineguns, despite his selling many weapons to the Branch Davidians.

f. Paul Fatta Charged After Leaving Waco

Another individual who could attest to the Branch Davidians' legal gun business was Paul Fatta, who ran the business. He was in Austin with his son at a gun show on the morning of February 28. When he returned to Waco that afternoon, Fatta called radio station KRLD, which had been interviewing David Koresh. The station broadcast Fatta telling the radio interviewers that authorities had refused to give him information, and that he wanted to get back to Mount Carmel.

According to Ron Engelman, who talked to Paul Fatta several times during the siege, Fatta then offered his assistance in bringing about a peaceful end to the standoff. However, authorities refused his help and were abusive towards him. After a week he left Waco for Oregon. BATF immediately issued a warrant for his arrest on the charge of conspiracy to manufacture and possess unregistered machine guns and stated that he was "armed and dangerous." Engelman said this action frightened Fatta into believing that BATF would murder him if he surrendered to them. [284][186] Fatta finally surrendered to Texas Rangers in Houston on April 26. "Mike DeGuerin, Mr. Fatta's attorney, said his client did not surrender earlier because of his mistrust of federal agents." [285][187]

g. Raid Commanders and BATF Officials Covered Up Loss of Surprise

Part Two, Section Seven of the Treasury report is entitled "ATF Post-Raid Dissemination of Misleading Information About the Raid and the Raid Plan." (TDR:193-209) The report states, "raid commanders Chojnacki and Sarabyn appear to have engaged in a concerted effort to conceal their errors in judgement. And ATF's management, perhaps out of a misplaced desire to protect the agency from criticism, offered accounts based on Chojnacki and Sarabyn's statements, disregarding clear evidence that those statements were false." (TDR:193)

When BATF finally informed higher Treasury Department officials of the planned raid Friday, February 26, 1993, then Acting Assistant Secretary of the Treasury John P. Simpson decided the action was too dangerous and "directed that the operation not go forward." Also expressing reservations was Ronald K. Noble, the designated but unconfirmed Assistant Secretary of the Treasury for Law Enforcement, who was acting as a consultant. In a Friday night conference call, Higgins told Simpson and Noble that he had obtained reassurance from raid co-commander Philip Chojnacki that the "raid could be executed safely" and that "the raid would be aborted. . .if things did not look right," i.e., if there was any evidence of a "change in routine." Simpson allowed the raid to go forward, "after these assurances were given." (TDR:75-76) During the June 9, 1993, House Appropriations subcommittee hearing Higgins stated he "instructed Dan (Hartnett) . . .if there is any indication that we have lost that element of surprise, simply do not do the raid. And I was assured that would be the case." [286][188] Noble told the same committee Higgins told him, "if for any reason they lose the element of surprise. . .express orders or directives to call off the operation." [287][189]

However, even after Chojnacki learned from his co-commander Chuck Sarabyn that the Branch Davidians knew BATF was coming, and after consulting briefly with SAC Ted Royster--who did not have an official title for the raid, but was still a raid leader, he allowed the raid to go forward. Chojnacki even called the National Command Center in Washington and reported that the raid was commencing. He did not report that the Branch Davidians knew about the raid. When Rodriguez learned that the raid was underway he was "distraught." (TDR:89-91, 165)

It would be almost two months before this account of what really happened that morning would be related to the press and public. >From

the start, BATF officials denied reports like the Los Angeles Times that an agent was heard shouting, "We've gotta move. He's been tipped off." [288][190] BATF's Law Enforcement Associate Director Daniel Hartnett, Deputy Associate Director Edward Conroy, and Intelligence Division Chief David Troy, who became the principal BATF spokesperson, immediately interviewed undercover agent Rodriguez and three other agents who were with Rodriguez when he made the important call to Sarabyn. All confirmed that Rodriguez had told Sarabyn that Koresh knew that BATF raid was imminent.

However, Hartnett and Troy gave less credence to their stories than to commander Chuck Sarabyn's story that Rodriguez "was not real descriptive as to the ATF-National Guard statement" and commander Philip Chojnacki's claim that Sarabyn hadn't told him anything about Koresh's foreknowledge. So Troy continued to deny to the press that the commanders knew that Koresh had been alerted to the impending raid. (TDR:196-199)

Meanwhile, the Texas Rangers were gathering even more evidence, including from 60 BATF agents, that raid commanders Sarabyn and Chojnacki knew that they had lost the element of surprise. They passed this along to Hartnett and Conroy. However, "Hartnett and Conroy failed to keep (BATF Director) Higgins informed about the mounting weight of evidence that Sarabyn and Chojnacki's account was false," so Higgins continued to mislead the press and public. In late March Director Higgins wrote a memo to BATF agents denying there was a coverup of "mistakes in planning, leadership or both" after he discovered some agents were planning to make coverup allegations to the media. [289][191]

Finally in early April, after a number of agents contacted Higgins directly to complain about these misstatements, did Higgins ask for a copy of Rodriguez statement. Yet for another month he allowed Hartnett and Conroy to instruct Troy to keep misleading the press. Only under pressure from the Treasury review team did Sarabyn, Chojnacki, Hartnett and Conroy finally admit to their roles in the coverup. (TDR:199-206) SAC Ted Royster also participated in the coverup, claiming he did not know that surprise had been lost. When Noble threatened him with disciplinary action, "Royster then sent agents a three-page letter outlining personal pressures and career problems that caused his memory lapse." [290][192]

Chojnacki and Sarabyn also tried to cover up their lack of professionalism and errors by altering the written plan of the raid, which they had not issued before it took place. They did not tell the Texas Rangers or the Treasury review team that it had been altered. They then tried to blame the alterations on a lower ranking agent who had assisted them and finally admitted the truth to the review team. (TDR:208-210)

Immediately after the release of the Treasury Department report on Waco, Treasury Secretary Bentsen put Hartnett, Conroy, Troy, Chojnacki and Sarabyn on administrative [illegible] [illegible] resigned. Bentsen also removed BATF Director Higgins, who had another month to go before retirement.

The Treasury Department is willing to admit to this coverup because so [illegible] agents and the Treasury Department continue to defend BATF's [illegible] possibility of other coverups which only an Independent Counsel investigation can discover.

h. Raid Commanders May Have Lied about Firing from Helicopters

According to the Treasury report raid commander SAC Philip Chojnacki was in one of the three National Guard helicopters "at the outset of the firefight." (TDR:154) According to Clifford L. Linedecker, Ted Royster was also in one of the helicopters. [291][193] Both Chojnacki and Royster would go on to lie to their superiors about whether they knew if the element of surprise had been lost. Therefore, we must wonder if they also lied about whether there was firing from helicopters.

i. Government Keeps Warrants Sealed After Koresh Sees Them

On February 28, 1993 BATF had the Magistrate seal the contents of the affidavit and search and arrest warrants "to ensure the integrity of an ongoing criminal investigation against Vernon Wayne Howell and others. It is believed that evidence may be altered should the direction of the investigation become evident." This prevented the public from discovering the grounds for the raid. "One problem with either criticism or support for the government is that the reasons for the raid remain largely secret. The original search and arrest warrants remain sealed, and the ATF won't say exactly what it was looking for, or what information it has. The agency has insisted that it has a legal right to keep the warrants sealed until they have been executed." [292][194]

On March 19th the FBI delivered to Koresh "copies of legal documents concerning the ATF warrants." (JDR:74) Despite the fact that Koresh now knew the contents of both the February 25th and the later March 5 affidavit and search warrant, the government refused to release these to the press and public until April 20, 1993, the day after Koresh's death.

j. Possibility BATF will Tamper with Audio/Video Evidence

Above we noted that U.S. district court Judge Walter A. Smith, Jr. ordered that all BATF audio and videotapes be preserved. However, defense attorneys had requested that the judge retain the tapes to prevent any tampering to delete evidence of government wrongdoing or create evidence of Branch Davidian wrongdoing. With modern audio and video techniques, such tampering can go virtually undetected; therefore, the government's keeping the tapes assures that many will continue to doubt whatever evidence they present.

k. BATF Involved with Texas Rangers' Investigation

As we have seen the U.S. Attorney's office in Waco deputized the Texas Rangers as U.S. Marshals for the criminal investigation and prosecution. Nevertheless, there is evidence of continued BATF interference with the investigations--including after the fire. The Justice report states, "a memorandum of understanding between the FBI and ATF gave the ATF jurisdiction in cases involving the injury or death of their own agents." (JDR:23) It was BATF agents Aguilera and Dunagan who continued to issue search and arrest warrants during the siege.

The Texas Rangers took charge of the ruins of Mount Carmel the afternoon of the fire. During the first days of the trial, a Texas Ranger "recounted barricading the site after the standoff to assure there would be no coverup." [293][195] Nevertheless, during the next few days BATF and FBI agents had access to the crime scene--and ample opportunity to tamper with evidence. News video tapes and photos clearly show that BATF agents hoisted a BATF flag over Mount Carmel's still smoldering ruins. And the Treasury report admits "after the

Compound was ravaged by fire, ATF firearms explosives experts collected evidence of the firearms and other destructive devices Koresh and his followers had possessed." (TDR:128) Again, many believe that deputizing state investigators as U.S. Marshals prevented them from fully investigating possible BATF and FBI crimes against the Branch Davidians.

1. Questions About Weapons Found After the Fire

The Treasury report states, "based on the materials recovered, the experts concluded that Koresh possessed: 57 pistols, 6 revolvers, 12 shotguns, 101 rifles, 44+ machineguns, 16+ silencers, 6 flare launchers, 3 live grenades plus numerous components, and 200,000 rounds of unused ammunition." (TDR:128) Two 50 caliber rifles were among the rifles found. [294][196] Among these items, only the machineguns, the live grenades, and the silencers would have been illegal. During the third day of the trial, Texas Rangers reported finding 48 machine guns, one silencer, six pieces of tubing being converted into silencers, but no live grenades among the many grenade parts. Also, the expert said there was no way of knowing if any of the machineguns actually had been fired. [295][197]

As we have seen, BATF--and FBI--agents had access to the ruins of Mount Carmel for 24 hours after the fire. BATF had the time and opportunity to tamper with evidence. And they certainly had the motive--excusing the February 28 raid which killed four of their agents and set in motion the 51 day siege and caused the death of 86 or more Branch Davidians. These facts, and BATF agents' history of coverup in this issue, have prompted wide speculation that BATF "planted" evidence in the form of burned illegal weapons. However, news reports have not mentioned defense attorneys questioning the authenticity of the weapons found.

Further, there has been little discussion of whether the illegal machine guns, grenades and silencers were assembled from legal parts before the February 28th raid by 76 armed BATF agents, or after it, by Branch Davidians, in self-defense. Papers filed at the time Schroeder agreed to plea bargain state that she "admitted being an armed guard from the day of the initial raid until March 12th, when she left the compound. Though she was unarmed during the actual shootout, she admitted that after the standoff began, she carried a semiautomatic AR-15 rifle and later a fully automatic AR-15 machinegun when she took up her guard posts." [296][198] The fact that she admitted to carrying automatic weapons only "later" might be evidence that they were manufactured after the BATF attack.

[297]17. TREASURY DEPARTMENT COVERUP

The Treasury Department report does expose inept planning and execution of the BATF raid on the Branch Davidians. However, it defends the probable cause basis for the search and arrest warrants and excuses the decision to go forward with a paramilitary raid. There is other disturbing evidence of coverup which support the argument that an Independent Counsel must be appointed to investigate the federal government's destruction of the Branch Davidian religious group.

a. Ronald K. Noble Conflict of Interest

In late April, 1993, Treasury Secretary Lloyd Bentsen selected Assistant Secretary of the Treasury for Law Enforcement Ronald K. Noble to head the investigation of BATF's handling of the raid on the

Branch Davidians. As we know, Noble approved the decision to go ahead with the raid. Since he had not been confirmed, Noble had no formal authority at that point. However, he still retains moral responsibility. So Noble would seem to have little interest in issuing a report that would either challenge significantly BATF's investigation or operations modus operandi or energetically seek evidence of criminal behavior on the part of BATF agents or officials.

b. No Testimony Taken Under Oath

There is no indication that any individuals gave testimony under oath to those who conducted the review. In fact, the Treasury's "review team" seems to have been hampered in getting at the whole truth by "employment contracts," the "Privacy Act" and the "Federal Advisory Committee Act." (TDR:6) There is also no evidence that any of the BATF officials who testified before Congressional committees were sworn in, though they still could be prosecuted were it proved they had lied to a Congressional committee. Therefore, much of the truth about what really happened at Waco will come out only during the trials of the Branch Davidians, civil law suits against the government or through an independent investigation.

c. Treasury Department Attempts to Seal Investigation Records

In mid-August 1993 the Treasury Department proposed a rule to exempt the Treasury Department's report from public scrutiny. "In accordance with the requirements of the Privacy Act of 1974, as amended, Departmental Offices, Office of Enforcement is proposing to exempt a system of records, the Waco Administrative Review Group Investigation (DO/.207) from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement and investigative purposes, to comply with legal prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records. The exemptions are intended to increase the value of the system of records for the fact finding investigation and administrative review performed by the Waco Administrative Review Group so as not to reveal local, state or Federal law enforcement techniques, sources and methods or affect the ability of law enforcement agencies to prosecute people for criminal wrongdoing."

The Treasury Department gave the public a month to comment. It received 5,150 telegrams and letters, most in the last few days before the deadline. Representative Pat Schroeder wrote: "I strongly oppose this rule. While I can appreciate the Treasury Department's desire to complete a successful investigation and prosecute people for wrongdoing, the public and media's right to know should not be compromised." [298][199]

Austin's Freedom of Information Foundation sent out a press release supporting the Reporters Committee for Freedom of the Press. It said "any reporters who were targeted in the investigation should have access to the findings and be allowed to amend any records about themselves. . .In addition, the committee said the notice of the exemption is too broad and would exempt all records of the review group, not just those that are withheld for the purposes outlined in the exemption." [299][200] David Kopel, director of Firearms Research Project in Denver said, "I think it is a scandalous attempt to cover up the facts surrounding one of the greatest governmental disasters in the 20th century." Larry Pratt of the Gun Owners of America--which has protested the fact that BATF considers Koresh's showing its videotapes as evidence of criminal intent--asserted, "I think this means that not only is the fox in charge of the chicken coop, he's not going to let

anyone inside to see how many bones he's picked clean." [300][201]

d. Treasury Department Report Demonizes Koresh and Branch Davidians

The Treasury report excuses any errors in BATF's investigation or affidavit of probable cause and its overly aggressive paramilitary raid by demonizing Koresh and the Branch Davidians. "The extraordinary discipline that Koresh imposed on his followers, which enable him, for example, to obtain all their assets and to establish exclusive sexual relationships with the Compound's female residents, while not itself cause for ATF intervention, made him far more threatening than a lone individual who had a liking for illegal weapons. The Compound became a rural fortress, often patrolled by armed guards, in which Koresh's word--or the word that Koresh purported to extrapolate from the Scriptures--was the only law. And the accounts of the former cult members, including an abused child, that Koresh was sexually abusing minors made it clear that Koresh believed he was beyond society's laws. Were Koresh to decide to turn his weapons on society, he would have devotees to follow him, and they would be equipped with weapons that could inflict serious damage." (TDR:127) Branch Davidians deny Koresh took all their assets and controlled their sex lives. And government is not empowered to assault individuals or groups merely because they could conceivably "decide" to attack others.

It is interesting to note that despite.the government's assertion the Branch Davidian's were under Koresh's spell, BATF Associate Director Daniel Hartnett told the June 9, 1993, House Appropriations subcommittee hearing that it would have been difficult to lure Koresh away from Mount Carmel because he "feared that some of the people in side the compound, his followers, were going to turn against him," and "he was almost paranoid--at least the way it was being described to me--that something was going to happen to him by his followers." [301][202]

e. Evidence of Coverup in the Treasury Department Report

Throughout this report we have noted where the Treasury report has failed to provide information--even when it would not seem necessary to "redact" it per law--or has provided questionable information. The examples most indicative of coverup are: no mention of the Branch Davidians legal weapons business; ignoring or correcting Davy Aguilera's misleading or inaccurate statements without mentioning he made them; not including Aguilera's affidavit in the Treasury report; supporting Aguilera's contention that McMahon lied to him about Koresh and Howell being same person; no acknowledgement of Koresh's past cooperation with law enforcement; not discussing whether publicity was a BATF motivation for the raid; not admitting that BATF knew that George Roden's former tenants were known drug traffickers; not admitting that BATF initially denied they had made a claim of a drug nexus to obtain free military and National Guard support; not admitting that no agent was assigned to announce the search warrant, that a battering ram was to be used, or that Chuck Sarabyn warned agents to expect gunfire; no mention of allegations of friendly fire or agents firing from helicopters; no mention of the false initial report that three Branch Davidians tried to shoot their way out of Mount Carmel; no mention of Henry McMahon being taken into protective custody or of Paul Fatta being put on the "most wanted list" after offering his help to BATF.

f. Treasury Department Has Taken No Further Action Against Agents or Officials

In early October, 1993, Robert Cesca, Treasury Deputy Inspector General, was reviewing whether to launch a full scale investigation of

agents and officials actions. As we have seen, two BATF agents and two BATF officials were immediately put on administrative leave and Director Higgins was dismissed one month before the end of his term. Any charges the inspector general's office might recommend would be referred to the Justice Department. In late September, Representative Charles E. Schumer, chair of the House Judiciary Subcommittee on Crime said he thought "those involved should be fully prosecuted." However, a call to his office revealed he was only calling for prosecuting agents for official misconduct, such as lying to superiors. Similarly, these are probably the only prosecutions the Treasury Department might consider. As of January, 1994, there had been no action to prosecute anyone.

g. No Recommendations to Prevent Future Tragedy

What lessons has BATF learned from Waco? Only two, it would seem--they need better guns and better spies. An official at the Treasury Department's September 30, 1993, press conference can be heard to utter a comment about the need for better guns. And John W. Magaw, acting director of BATF, stated he was determined that other religious "cults" not develop into "armed compounds." "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 ATF 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." [302][203] During an October, 1993 House Appropriations subcommittee hearing Philip K. Noble told lawmakers: "Although we cannot prejudge all future situations, we must be open to the possibility that a dynamic entry--exposing agents, innocent persons and children to gunfire--may simply not be an acceptable law enforcement option. [303][204] Time will tell if BATF ends its aggressive modus operandi.

[304]18. COMMITTEE FOR WACO JUSTICE CONCLUSIONS

a. BATF Drove Branch Davidians to Armed Defense

The Committee for Waco Justice believes that the Bureau of Alcohol, Tobacco and Firearms drove the Branch Davidian religious group to self-defense because of its conspicuous surveillance, its refusal to acknowledge Branch Davidian attempts to cooperate, its collusion with "cult busters" committed to destruction of the group, and its use of excessive force in executing search and arrest warrants. Given their religious views that the government was intent on massacring them, it is understandable why the Branch Davidians resorted to armed defense. While we believe this was not the wisest choice, we believe that it was legal self-defense.

b. Independent Counsel Should Prosecute Responsible BATF Agents and Officials

Under current law the Attorney General can appoint an Independent Counsel to identify and prosecute any BATF agents and officials suspected of committing any and all relevant crimes, including the following: * Official Misconduct for disobeying superior's orders and covering up their disobedience; this would apply to anyone found participating in any other to-be-discovered coverups.

* Negligent Homicide for carrying out an unnecessary and ineptly planned paramilitary raid, against specific orders, which resulted the deaths of four BATF agents and five Branch Davidians;

* Homicide or Manslaughter in the death of Branch Davidian Michael

Schroeder should it be learned that the alleged "shootout," on the afternoon of February 28, 1993 was in fact an unlawful and/or excessive use of force against Schroeder;

* Conspiracy against the Rights of Citizens U.S. Code Title 18, Section 241 reads: "If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured- they shall be fined not more than $10,000 or imprisoned not more than 10 years, or both: and if death results, they shall be subject to imprisonment for any term of years or for life."

* Deprivation of Rights Under Color of Law U.S. Code Title 18, Section 242 reads: "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if bodily injury results shall not be fined under this title or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life."

On the evening of February 28, 1993, the Treasury Department and BATF agreed to turn over control of the scene to the FBI. By that time Special Agent-in-Charge Jeffrey Jamar of the San Antonio office, who had been put in charge of the operation, had already driven up to Waco. The FBI Hostage Rescue Team (HRT) and several Special Weapons and Tactics Teams (SWAT) also began arriving that day. (JDR:9,27) [305][205]

Meanwhile, Koresh and the Branch Davidians were convinced that BATF's attack was the opening of the Fifth Seal: that those six Branch Davidians slaughtered February 28th were killed for "preaching God's word" and the surviving Branch Davidians only would have to "rest a little longer" until the remainder were also put to death. Thus would begin the countdown to Apocalypse and the Second Coming of Christ. They also believed that the siege was an opportunity to spread Koresh's message to the world that God was giving humanity its last opportunity to repent. [306][206]

The FBI regarded the Branch Davidians' resistance as "a direct challenge to lawful federal warrants and to duly authorized law enforcement officials" (JDR:12) and had little sympathy with either the Branch Davidians' religious beliefs--or their complaints about BATF's excessive use of force. Doubtless, Koresh was looking for a way to come out that would be consistent with his religious views and his sense of dignity. However, during 51 days of the siege, negotiators' efforts to convince them to surrender were continually undermined by HRT Commander Richard Rogers' persuading siege commander SAC Jeffrey Jamar to allow him to escalate pressure tactics and psychological warfare. As early as March 1, 1993, there were predictions that the government's intentions towards the Branch Davidians were violent. Former McLennan County District Attorney Vic Feazell, who had unsuccessfully prosecuted the Branch Davidians for the shootout with George Roden, criticized federal agents for "storm trooper" tactics in laying siege to Mount Carmel and predicted a grim end to the standoff.

"The feds are preparing to kill them," he said, noting the mobilization of military equipment. "That way they can bury their mistakes. And they won't have attorneys looking over what they did later at a trial." [307][207]

[308]FBI-JUSTICE DEPARTMENT VIOLATIONS OF RIGHTS, EXCESSIVE FORCE AND COVERUP: THE 51 DAY SIEGE AND APRIL 19, 1993 ASSAULT ON THE BRANCH DAVIDIANS

In this section the Committee for Waco Justice report describes the FBI's violations of constitutional rights and use of excessive force in its handling of both the siege and the April 19th destruction of Mount Carmel and the subsequent FBI and Justice Department coverup. The report then presents the Committee for Waco Justice conclusions: that the FBI effectively massacred the 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--or even intentional-- homicide. We will present further recommendations in the last section of this report.

It should be noted that none of the testimony given to the Justice Department "review teams" or to Congress was given under oath. Also, the Justice Department report does not include information which might affect the prosecutions of the Branch Davidians now on trial. (The Justice report specifies where material is being withheld by using the notation {material redacted as required by statute}.)

The "Justice Department report" issued October 8, 1993, consists of 5 separate documents. Assistant to the Attorney General Richard Scruggs compiled the largest report, the Justice Department factual report. Deputy Attorney General Philip B. Heymann issued the short report "Lessons of Waco: Proposed Changes in Law Enforcement." Edward S.G. Dennis, Jr. issued an "Evaluation of the Handling of the Branch Davidian Stand-off in Waco, Texas." Finally, nine outside experts submitted recommendations compiled in "Recommendations of Experts for Improvements in Federal Law Enforcement After Waco." The tenth outside expert, Alan A. Stone, M.D., submitted a separate report one month later.

WHITE HOUSE, JUSTICE DEPARTMENT AND FBI CHAINS OF COMMAND FEBRUARY 28 - APRIL 19, 1993

WHITE HOUSE

Bill Clinton - President
Thomas McLarty - Chief of Staff
Bernard Nussbaum - White House Counsel
Vince Foster - Deputy White House Counsel
Bruce Lindsay - Presidential Advisor
George Stephanopolous - Communications Director

JUSTICE DEPARTMENT

Stuart M. Gerson - Acting Attorney General (From Feb. 28-March 12)

Webster Hubbell - Assistant to Acting Attorney General Gerson, liaison between Clinton and Justice Department
Janet Reno- Attorney General (From March 12)
Richard Scruggs - Assistant to the Attorney General
Philip B. Heymann - Deputy Attorney General
Webster Hubbell - Associate Attorney General
Carl Stern, Director of the Office of Public Affairs

Mark Richard - Deputy Assistant Attorney General
Ronald Ederer - U.S. Attorney (James DeAtley, his assistant)
Bill Johnston - Assistant United States Attorney in Waco
John Phinizy - Assistant Untied States Attorney in Waco
LeRoy Jahn - Assistant United States Attorney in Waco and lead Prosecutor of Branch Davidians

FEDERAL BUREAU OF INVESTIGATION

Officials in Washington

William S. Sessions - Director
Floyd Clarke - Deputy Director
Doug Gow - Associate Deputy Director for Investigations
Larry Potts - Assistant Director of the Criminal Investigative Division
Danny Coulson - Deputy Assistant Director of Criminal Investigative Division
E. Michael Kahoe -- Section Chief of Criminal Investigative Division Violent Crimes

Agents in Waco

Jeff Jamar - Special Agent-in-Charge (SAC) of the Waco Operation
SAC Robert Ricks, SAC Richard Schwein, SAC Richard Swensen, aides to Jamar
Richard M. Rogers - Assistant Special Agent-in-Charge and commander of Hostage Rescue Team
Byron Sage - Supervisory Special Resident Agent, Chief negotiator, in charge of 24 negotiators.

## [309]1. FBI CONTROL OF THE PRESS AND MEDIA

According to Mad Man at Waco authors Brad Bailey and Bob Darden, the FBI used its daily press briefings as a way of "controlling" the media and the public's perceptions of David Koresh so that they would consider him an unpredictable psychopath. The FBI's other goal was "inflaming the already beleaguered cult leader."

### a. FBI Restricted the Press and Media

The FBI imposed a number of harsh rules on the media. It prohibited reporters from getting closer than three miles to Mt. Carmel, claiming the Branch Davidians' .50 caliber rifles could hit anyone closer. The FBI strictly controlled its daily press briefings, prevented agents and officials from granting media interviews.

Speaking at the September 10, 1993, Freedom of Information Foundation panel on "Mt. Carmel: What Should the Public Know," John O. Lumpkin of the Associated Press described other examples of government restrictions on the media. The FBI refused to allow Koresh to speak to the media. It refused to divulge information such as: on whose authority they made the original raid, who was alive or dead at Mount Carmel, the contents of the warrant against David Koresh, and why building walls were bulldozed into the fire. Months after the end of the siege, FBI representatives continued to refuse to talk to the press. Lumpkin said, "it is my personal opinion. . .the argument could be made (that) the situation could have turned out differently, and certainly not tragically, if there had been much more open access instead." [310][208]

Lumpkin asserted that because of FBI control of information, the public still does not know the truth about what happened in Waco. He said a reporter told him it reminded him of U.S. government control of the American press in Vietnam. Panelist Shelly Katz, a Time Magazine photographer stationed in Waco during the siege, said this was the worst suppression of media he had seen in 27 years of journalism.

b. FBI Intimidated the Press and Media

Federal agents intimidated the media by arresting members on flimsy pretexts. Federal agents assaulted and arrested a reporter who had merely asked about a Branch Davidian arrested after the BATF raid and illegally confiscated his film. When journalist Louis Beam, who had valid press credentials for the right-wing publication Jubilee, asked whether the country was "witnessing a fascist takeover," he was whisked out of the press room. When he tried to return the next month he was arrested on charges of criminal trespass. [311][209] After state troopers arrested two news photographers and confiscated their film near the ruins of Mount Carmel on April 22, 1993, Tony Pederson, managing editor of the Houston Chronicle, protested: "In a situation already marred by tragic loss of life and questionable actions, this seems to be a rather sorry follow-up. One has to wonder seriously if the Bill of Rights has been suspended in McLennan County." [312][210] During the Freedom of Information Foundation media panel Dick DeGuerin asserted that the press should have done civil disobedience and continued getting arrested until they were allowed to get closer to the scene of the action.

c. FBI Lied to the Press and Media

Louis Alaniz, a Christian sympathizer who snuck into Mount Carmel for several days during the siege and left just before the fire, said the Branch Davidians listened to the FBI press conferences. "What really got them is they constantly heard the story changing-another lie, another lie, another lie. These people were saying, `Why are they saying all this about us?' I didn't see anything that (the FBI) was telling the press that was true." [313][211]

We will discuss these various lies as we proceed. One glaring example was media spokesperson SAC Bob Ricks' telling the public that operations were costing $2 million a day. [314][212] During the April 22, 1993, Senate Appropriations Committee hearings it was revealed that actual costs for the operation as of April 22, 1993, were $6,792,000, an average of $130,000 a day. [315][213]

Another example was the FBI's describing the rickety wooden buildings of Mount Carmel Center as a "fortress" built for war. They alleged that the old concrete building around and on top of which the new building had been built was a "concrete bunker;" that the tornado shelter under construction was an "underground bunker;" and that the underground bus which was used as a tunnel to the tornado shelter, and a practice shooting range, was particularly sinister. The disinformation grew as the siege continued, to end in a crescendo of falsehoods immediately after the April 19th fire.

d. Press and Media Repeated Government Propaganda

During the media panel attorney Dick DeGuerin condemned journalists for engaging in "pack journalism" and for regurgitating BATF and FBI propaganda by repeating charged words like "cult," "compound," "fortified bunkers," "Ranch Apocalypse," etc. He also criticized journalists for merely waiting for the Treasury and Justice Department reports as if they would be a final "Warren Commission Report" and not

doing any investigative reporting to find out the truth.

The FBI's tight control of the news left many media people with only government allegations and disinformation about child abuse, arms buildups, mass suicide, etc. to write about. Few bothered to dig deeper to discover the dubious sources of these allegations. Even fewer examined their own prejudices against deeply committed religious groups. Much of the media merely repeated Cult Awareness Network propaganda and gave CAN spokespersons ample "cult busting" forums.

e. Press and Media Practiced Self-Censorship

Worse than merely repeating government propaganda was the self-censorship in which some media engaged, including suppressing criticism of the government. In his media panel comments, Dick DeGuerin chastised the national media for ignoring two important stories: BATF's refusing Koresh's invitation to view his guns before the raid and BATF's taking Koresh's gun dealer and business partner Henry McMahon into "protective custody" after the raid and forbidding him to speak to the press or the FBI. The national media still has not reported either story. The producers of Pensacola's television show "Lawline" even sent copies of their April 21, 1993, interview with McMahon, titled "Fiasco in Waco," to television stations all over the country. However, stations ignored McMahon's allegations. [316][214]

After the April 19th fire there were other incidents of self-censorship. Ron Engelman hosted a mid- morning talk show on KGBS radio in Dallas from February through June, 1993. The Branch Davidians listened to his show and even requested that he be made a negotiator. (JDR:Appendix C:3) Even after the fire, Engelman's callers wanted to talk about the destruction of the Branch Davidians. Management demanded Engelman move his show to 6 a.m., take a co-host and make the show "light and fluffy." Engelman refused and resigned. [317][215]

NBC, which had aired the television movie "Ambush at Waco" about the BATF raid on Mount Carmel, originally planned to do a sequel about the ending of the siege. However, it canceled the sequel, claiming it would be "too violent." Perhaps NBC network executives did not want to offend government officials by vividly portraying government tanks gassing the Branch Davidians and ramming away at the building until it caught fire, killing more than 80 people.

While some newspapers like the New York Times and the Washington Times called the Justice report a "whitewash," others applauded it. An October 12, 1993 Washington Post editorial declared: "In hindsight, it is tempting to say that anything that turned out so badly must have been the result of serious error. But it is difficult to cast blame after reviewing the evidence. . . (A)n earnest effort was being made to talk the group's members out of the buildings. . .The finding of mass suicide and/or murder is a reasonable one."

[318]2. POSSIBLE ILLEGAL USE OF TANKS

The Justice report is not as forthcoming as the Treasury report regarding the FBI's obtaining military tanks without violating posse comitatus prohibitions on the use of the military as a police force. First, the report does not reveal whether the FBI used the allegation of a "drug nexus" at Waco to obtain the tanks from the military on a no charge, "nonreimbursable" basis. However, a Legal Times reporter wrote, "Much of the equipment used at Waco was provided by the Army, under an agreement that all costs would be reimbursed." [319][216]

Next the report states: "the FBI requested Bradley fighting vehicles from the U.S. Army. Nine of these-- without barrels, pursuant to an agreement between the FBI and the Army to avoid posse comitatus prohibitions--were ultimately provided." However, when Koresh claimed he had weapons that could blow these vehicles into the air, the FBI "sought and obtained from the Army two Abrams (M1A1) tanks and five M728 Combat Engineering Vehicles (CEVs)." (JDR:123-124) The report does not state if these also were "without barrels," but many claim that the tanks do have barrels--which even the Justice Department itself admits would be illegal.

Upon learning that tanks had been brought to Waco, "the President called (Acting Attorney General Stuart) Gerson, requesting an explanation for the deployment of military vehicles. Gerson assured the President that no assault was planned. . . (and) that it was legal for the FBI to use the military vehicles for safety purposes." (JDR:239) Evidently, this means that it was illegal to use the tanks for actions like the April 19th assault. However, no government agency seems willing to challenge what the Justice report itself infers is the illegal use of the tanks.

Fire survivor Ruth Riddle expressed shock at the use of the tanks. "Who ever heard of Americans using tanks against Americans on American soil?" [320][217]

[321]3. FBI IMPATIENT WITH CONCILIATORY MEASURES

The federal government has successfully negotiated past sieges. The 1973 siege at Wounded Knee lasted 70 days and, despite the fact that two FBI agents had been killed, the siege ended peacefully. Similarly, a Native American takeover of Alcatraz (after it was no longer used as a prison) was allowed to play itself out peacefully. BATF and the FBI had negotiated a peaceful surrender after 3 days with the Covenant of the Sword and Arm of the Lord group in 1985. And despite the deaths of Samuel and Vicki Weaver, after Bo Gritz became a third party negotiator, Randy Weaver did surrender without further bloodshed.

Nevertheless, FBI Hostage Rescue Team commander Richard Rogers--evidently an individual with little patience for negotiations--convinced siege commander SAC Jeffrey Jamar to allow him to use pressure tactics against the Branch Davidians. Justice Department outside expert Alan A. Stone, M.D. notes that "pushed by the tactical leader (i.e., Rogers) the commander on the ground (i.e., Jamar) began to allow tactical pressures." (JDR:Stone:9) These tactical pressures--cutting off power, harassing the Branch Davidians with bright lights and loud music, destroying property--went against the recommendations of FBI behavioral scientist and many negotiators.

Dr. Stone criticized these actions: "I have concluded that the FBI command failed to give adequate consideration to their own behavioral science and negotiation experts. They also failed to make use of the Agency's own prior successful experience in similar circumstances. They embarked on a misguided and punishing law enforcement strategy that contributed to the tragic ending at Waco." (JDR:Stone:1) He holds: "What went wrong at Waco was not that the FBI lacked expertise in behavior science or in the understanding of unconventional religious groups. Rather, the commander on the ground and others committed to tactical-aggressive, traditional law enforcement practices disregarded those experts and tried to assert control and demonstrate to Koresh that they were in charge. . . (T)he FBI's own experts recognized and predicted in memoranda that there was the risk that the active aggressive law enforcement mentality of the FBI--the

so-called `action imperative'-- would prevail in the face of frustration and delay." (JDR:Stone:14-15) (It should be noted that the Justice report quotes statements from audio tapes of negotiations. The full transcripts of these tapes must be investigated by independent reviewers.)

a. Smerick and Young Advised Against Tactical Pressures

The FBI consulted its own behavioral scientists, whose specialty was applying psychology to law enforcement situations, but ignored their recommendations. Pete Smerick and Mark Young recommended in several March 5th to 9th memos that this was not a typical hostage situation since the Branch Davidians insisted on staying with their leader. They wrote that "tactical presence. . .if carried to excess, could eventually be counter productive and could result in loss of life." They advised, "If the followers could be made to see that the government had no intention of engaging them in an apocalyptic final battle, then perhaps they would begin to question the validity of Koresh's predictions about the inevitability of such a battle."

Smerick and Young recommended that the FBI "establish some trust with Koresh" and even suggested "moving back from the compound, not to show law enforcement weakness, but to sap from Koresh the source of his powerful hold over his followers--his prediction that the government was about to start a war against them." [322][218] They concluded by saying that the FBI could "always resort to tactical pressure, but it should be the absolute last option we should consider."

In their last memorandum Smerick and Young did recommend mild pressures, like sporadic cutting off of power, sudden movements of equipment and manpower, and downplaying Koresh's importance to the press, but only if exercised with "extreme caution." (JDR:179-183) After reviewing Smerick and Young's recommendations, Alan A. Stone, concludes "decision-making at Waco failed to give due regard to the FBI experts who had the proper understanding of how to deal with an unconventional group like the Branch Davidians." (JDR:Stone:28)

b. FBI Rejected Family and Third Party Intervention

FBI commanders rejected two important negotiation tactics: allowing direct communication between families and Branch Davidians and allowing third parties to negotiate a surrender. While the FBI would send in video and audio tapes from families, in order to "drive a wedge" between Koresh and his followers, they forbid them to speak directly to family members. Months after the massacre, Balenda Gamen, mother of fire survivor David Thibodeau, recalled: "I originally came to Waco because I was challenged by the FBI when they said to me `there is no room for family in this operation. Perhaps we'll do it in the future.' When I heard those words I knew that the writing was on the wall for this community. They had a very good chance of never coming out." [323][219] Despite Gamen and other family members' continual entreaties to the FBI and Janet Reno via fax and registered letter that they be allowed to negotiate directly with relatives inside Mount Carmel, the FBI would only allow them to send in and receive occasional audio and video tapes. During the April 28, 1993, House Judiciary Committee hearings Reno admitted that she had never heard about the families' attempts to reach her.

A number of third party negotiators were considered and rejected. On March 6th FBI Director William Sessions had discussions with Koresh's former attorney Gary Coker--who happens to be a personal friend of Sessions from his days in Waco [324][220] --about negotiating with Koresh. However, FBI commanders refused to allow Coker to act as a negotiator because they thought he merely was looking for a client.

(JDR:131). Sessions himself offered to negotiate, but Acting Attorney General Gerson forbid it. (JDR:239-241)

On March 7th David Koresh declared he would surrender if some theologian could convince him his interpretation of the Seven Seals was incorrect, but the FBI made no attempt to pursue that avenue. (JDR:58) During the April 28, 1993, House Judiciary Committee hearing SAC Jamar declared that having theologicians--especially renowned ones--negotiate with Koresh would just make him more egomaniacal. After the Branch Davidians expressed respect for McLennan County Sheriff Jack Harwell, the FBI allowed him to participate in some mid-March negotiations. They did not give him a free hand as a third party negotiator. (JDR:133-134) They also rejected the Branch Davidians' request for radio talk show host Ron Engelman as a negotiator and Bo Gritz' offer to be a third party negotiator.

On March 16th frustrated Branch Davidians used flashlights to send a Morse code to reporters reading, "SOS, SOS, SOS, SOS. FBI broke negotiations. Want negotiations from the press." [325][221] The FBI soon started flashing bright lights at the compound at night, perhaps in part to end such communications. Only after the Branch Davidians were in Mount Carmel for a full month did the FBI allow David Koresh and Steve Schneider to meet with their attorneys. As we will see in a later section, peaceful efforts by third parties--attorneys and theologians--did result in a credible promise by Koresh to lead the Branch Davidians out of Mount Carmel despite FBI tactical pressure.

c. Conflicts between Tactical Agents and Negotiators

The Justice report admits that negotiators criticized the tactical commanders for undercutting negotiations: "the negotiators felt that the negotiating and tactical components of the FBI's strategy were more often contradictory than complementary. . .negotiators emphasized to Branch Davidians the `dignity' and fair treatment the group would receive upon its exit from the compound. By contrast, the negotiators felt that the efforts of the tactical personnel were directed toward intimidation and harassment. . .some of the negotiators lamented the absence of joint strategy sessions with the on-site commander and the tactical commander." (JDR:139-140)

The Justice report alleges that negotiators did not believe negotiations alone could have avoided the April 19th fire. (JDR:142) Alan A. Stone, who made special efforts to conduct his own interviews, found many of these individuals had a different opinion. "FBI's behavioral scientists and negotiators. . .share my belief that mistakes were made. . . (and) . . .expressed their determination to have the truth come out, regardless of the consequences." (JDR:Stone:4)

Nancy Ammerman, another outside expert, agreed that the FBI did have negotiators and experts giving them good advice. However, this advice was not heeded because these individuals were "outranked and outnumbered by the tactical types." [326][222] The tactical leaders had more pull than the negotiators because of the FBI's action-oriented ethos and because negotiators usually were stationed several miles from the site, while the Hostage Rescue Team and Richard M. Rogers were stationed at the site with SAC Jamar.

Also, some of the FBI negotiators were as hardnosed as the tactical agents, insulting Branch Davidians over the phone, calling Koresh a "child molester," and abruptly hanging up when they quoted Scriptures. One "negotiator" betrayed his true feelings when, after urging Branch Davidians to come out over a loudspeaker, he inadvertently left the microphone on and was heard to say: "I've been in the FBI for 27 years

and I've never seen anything like these people. They think they can get away with murder. Well, they'll have another thing coming as soon as they come out of there." [327][223]

[328]4. FBI RELIED ON EXPERTS AND CULT BUSTERS URGING TACTICAL PRESSURE

The Justice report states, "The FBI has questioned whether its negotiations with Koresh could even be characterized as `negotiations' at all, but rather as Koresh's attempt to convert the agents before it was too late and God destroyed them." (JDR:17) Yet despite Koresh's obsession with the Seven Seals, they never allowed anyone who was an expert on the subject to have direct contact with him.

Nancy Ammerman believes FBI agents had such a negative view of Koresh's religious views for three reasons: some individuals didn't understand religion, others were antagonistic towards religion in general, and others were antagonistic towards Koresh's specific views, which differed from their own. [329][224] She noted FBI officials' and agents' "tendency to discount the influence of religious beliefs and to evaluate situations largely in terms of a leader's individual criminal/psychological motives" and that their "consensus" was that "when they encountered people with religious beliefs, those beliefs were usually a convenient cover for criminal activity." (JDR:Ammerman:5) For example, siege Commander SAC Jamar expressed his contempt for Koresh when he declared at the April 28, 1993, House Judiciary Committee hearing that Koresh had merely "corrupted people" and "corrupted religion to his own ends" and that there was "no way to convince Koresh that he was not the Messiah."

It is evident from the Justice report's description of its consultations with seven theologians (JDR:186-189) that the only one they took seriously was Dr. Glenn Hilburn of Baylor University. Not surprisingly, the report mentions that "Baylor University has one of the largest `cult' reference and research facilities in the country." However, even Dr. Hilburn had little substantive impact on FBI thinking or actions. (JDR:186-189)

Several times the Justice report mentions theologian Philip Arnold--an expert on the Seven Seals and apocalyptic groups--but never acknowledges his crucial impact on Koresh's decision to come out. We will review that in detail in a later section. A study of the Justice report makes it clear that psychologists, psychiatrists (JDR:158-185) and "cult busters" (JDR:190-193) who reinforced the FBI's own prejudices had the greatest impact on the FBI's decisions.

a. Psychologists and Psychiatrists

The FBI was particularly attentive to the advice of psychologists and psychiatrists who asserted that Koresh was mentally unbalanced and would not surrender voluntarily. Dr. Park Dietz held that, "continuing to negotiate in good faith would not resolve the situation, because Koresh would not come out." (JDR:168) Dr. Anthony J. Pinizotto said, "Koresh displayed psychopathic behavior, that he was a `con artist' type, and he had narcissistic tendencies." Dr. Mike Webster opined, "Koresh appeared to be manifesting anti- social traits." (JDR:170) Dr. Perry and social worker Joyce Sparks, who interviewed children released from Mount Carmel, agreed that "Koresh was stalling for time, to prepare for his `final battle' with authorities." (JDR:171-174)

Dr. Joseph L. Krofcheck (with FBI psychological profiler Clinton R. Van Zandt) held that Koresh appeared to be a "functional, paranoid-type psychotic," that he was unlikely to "give up the power

and omnipotence he enjoyed inside the compound," that there was the possibility of a "mass-breakout. . .with women carrying a baby in one arm while firing a weapon from the other," and that "the only way the FBI could influence Koresh's exit from the compound would be some form of tactical intervention." (JDR:176-179)

b. Cult Busters

There is evidence that in response to Nancy Ammerman's sharp criticisms, to Rick Ross's being indicted for "unlawful imprisonment" in the summer of 1993, and to the New Alliance Party suit against the FBI for its abuse of the word "cult," the FBI and Justice Department have tried to cover up its association with professional or amateur "cult busters." The Justice report asserts the FBI "did not solicit advice from any `cult experts' or `cult deprogrammers.'" (JDR:190)

In mid-April the FBI asked Dr. Murray S. Miron, a Professor of Psycholinquistics at Syracuse University, to analyze five letters that Koresh sent out of Mount Carmel. After reading the first and third letters, he concluded that they bore "all the hallmarks of rampant, morbidly virulent paranoia. . .In my judgement, we are facing a determined, hardened adversary who has no intention of delivering himself or his followers into the hands of his adversaries. It is my belief that he is waiting for an assault." (JDR:174-176)

What the FBI either did not know--or did not admit--is that Dr. Miron is an outspoken cult critic. Reportedly, during the 1970s he had been involved with the Citizens Freedom Foundation, the anti-cult group which evolved into the Cult Awareness Network. During the week of April 14-21--even while he was consulting with the FBI-- Miron published an article called "The Mark of the Cult" in the Syracuse New Times. The article contains stereotypical anti-cult propaganda: "The totalitarianism of the cult banishes dissent and fosters dependence upon fallible, power-mad leaders. It is the system of every dictator, whether benign or benevolent." [330][225]

In typically media-savvy cult buster fashion, Miron managed to make himself one of the few FBI consultants quoted in major media right after the fire--thus using his FBI connections to promote his anti-cult propaganda. He told the Los Angeles Times, "I advised the FBI that all of his promises as to giving up were only subterfuges, deceptions and delaying tactics." [331][226] He told the Washington Post, "There was every indication in my mind that he was not prepared to commit suicide." [332][227] His comments occupied eight paragraphs of a New York Times article: "Dr. Miron said that Mr. Koresh had become so delusional" that he and his followers may have believed that after they set the fire "either that they were invulnerable and that the fires would consume the authorities while leaving them untouched, or that they were about to ascend to glory no matter what happened to their bodies." [333][228]

Rick Ross' contention that he was in close contact with BATF and the FBI is backed up by Nancy Ammerman's September 10, 1993 one page addendum to her report. (Which the Justice Department did not bother to include in its report.) In it she wrote, "The interview transcripts document that Mr. Rick Ross was, in fact, closely involved with both the ATF and the FBI. . .He clearly had the most extensive access to both agencies of any person on the `cult expert' list, and he was apparently listened to more attentively." However, after reviewing Ross's contacts with the FBI, the Justice report states: "The FBI did not `rely' on Ross for advice whatsoever during the standoff." (JDR:192)

The Justice report claims that the FBI determined Breault was talking

to the media and therefore only accepted his affidavits and electronic mail from him, but decided "not to contact him." (JDR:192) However, Breault asserts: "as soon as the siege began. . .the FBI tried for hours to contact us. . .they almost sent the police to drag us to police headquarters. Just before they took that drastic action, the negotiators broke through." Breault gave them detailed information about the Seven Seals, Koresh and his followers. Breault also writes: "The FBI contacted us throughout the siege. They showed us Koresh's letters." [334][229] Clearly, either Breault is lying or the FBI and Justice Department are trying to cover up their reliance on him.

During the April 28, 1993, House Judiciary Committee hearing FBI Director William Sessions admitted that the FBI had consulted "cult experts," though he got confused about the advice they had given the FBI. And SAC Jamar admitted, "we had a white paper on cults that was very, very useful to us." The white paper outlined the traits of cults with one "dynamic, manipulative, egomaniacal, psychopathic leader" and Jamar asserted that the traits fit Koresh "to a T." Jamar did not tell the committee what individual--or organization--gave him the white paper. However, considering that it contained typical anti-cult stereotypes, one might guess either Dr. Murray Miron or Rick Ross gave Jamar the white paper. Despite the Justice report denials, it is evident that there was a definite cult buster influence on--and justification for-- decisions to replace negotiations with pressure tactics against the Branch Davidians.

[335]5. FBI PRESSURE TACTICS REPLACED NEGOTIATIONS

Alan A. Stone, M.D. writes: "By March 21st, the FBI was concentrating on tactical pressure alone. . .This changing strategy at the compound from (1) conciliatory negotiation to (2) negotiation and tactical pressure and then to (3) tactical pressure alone." (JDR:Stone:10) Below is a description of these escalating tactical pressures and the Branch Davidians' response to them, grouped into Dr. Stone's three phases.

a. Conciliatory Negotiations--February 28-March 6

During this period 23 of the 35 individuals to leave Mount Carmel did so. The FBI did not punish Koresh after he reneged on his promise to surrender on March 2nd because "God had spoken to him and told him to wait." And they dealt gingerly with his various threats of violence against federal agents. When the U.S. Attorney's office enraged the Branch Davidians by charging with murder the two elderly women who had left Mount Carmel, negotiators quickly convinced them to drop the charges. However, much to the Branch Davidians dismay, the FBI did cut off their phones to everyone but the FBI and sent armored vehicles onto Mount Carmel Center's property. [336][(JDR:21-57)]

The FBI also "bugged" Mount Carmel. "A federal law enforcement official said that tiny recording devices had been sent in. . .with deliveries of milk, news magazines, a typewriter and various other items requested. [337][230] The Justice report admits there was "court- ordered electronic surveillance." (JDR:107-108) A Sunday Times of London article asserted that the FBI even used aircraft to pick up conversations, infrared devices to pinpoint individual's positions, and tiny fibre-optic microphones and cameras inserted in walls to relay audio and visual images back to the command center. [338][231] This information has not been confirmed.

b. Negotiation and Tactical Pressure--March 7-21

During this period 11 more people left Mount Carmel. While negotiators remained conciliatory, they did try to drive a wedge between Koresh and his followers by ridiculing Steve Schneider because his wife had born Koresh's child and by playing family and negotiation tapes over loudspeakers. The FBI began exposing the "negative part of (Koresh's) personality"--including his most inflammatory threats--during press conferences because "it is important for the American people to know what we are dealing with." [339][232] The FBI turned the electricity on and off as a pressure tactic, turning it off for good on March 13th.

These pressures made the Branch Davidians more distrustful. Koresh and Schneider called this "bad faith" by the government and Steve Schneider claimed on March 13th that "the government wanted to kill all of them and burn down the building." (JDR:68) On March 15th negotiators made it clear they would refuse to listen to any more "Bible babble." However, they did allow a "cordial and positive" face-to-face meeting between chief negotiator Byron Sage and McLennan County Sheriff Jack Harwell and Branch Davidians Steve Schneider and Wayne Martin. (JDR:70)

After the FBI sent in lawyers' letters and an audio tape from theologian Phil Arnold, Koresh told the FBI on March 19th that "he was ready to come out and face whatever might happen to him." He even joked, "When they give me the lethal injection, give me the cheap stuff." (JDR:70-75) Between just March 19th and 21st alone ten people left Mount Carmel.

c. Tactical Pressure Only--March 22-April 19

Despite these obvious successes, SAC Jamar, influenced by HRT commander Rogers, decided it was time to increase tactical pressures and "demonstrate the authority of law enforcement." (JDR:135) On the evening of March 21st the FBI started blaring music over its loudspeaker system and kept it up despite Branch Davidian complaints. At 11:45 p.m. Koresh sent out the message, "Because of the loud music, nobody is coming out." The next day Schneider claimed "that the music had been counterproductive." On March 22nd the FBI promised Koresh that if he surrendered immediately he could communicate with his followers in jail, hold religious services and make a worldwide religious broadcast. He angrily threw their letter away. (JDR:78-80) The last Branch Davidian left Mount Carmel on March 23rd.

The Justice report states the negotiating team recommended escalating harassment and the eventual gassing of the compound. (JDR:138) (As we know, not all of them agreed that was the best approach.) Except for finally allowing Koresh and Schneider to meet with their attorneys, over these four weeks the FBI's strategy consisted mostly of harassing, insulting and punishing the Branch Davidians.

During the March 24th press briefing, as the Branch Davidians listened, "the FBI increased its `verbal assault' against Koresh, calling Koresh a liar and coward, and accusing him of hiding behind his children." (JDR:83) It may have been during this time that an FBI spokesperson declared that Koresh was just a "cheap thug who interprets the Bible through the barrel of a gun." [340][233] The FBI harassed the Branch Davidians by blaring loud music night and day and playing back audio tapes of negotiation, family members and released members greetings tapes. It shined bright lights all night long.

Some of the harassment was quite violent. The FBI declared deadlines by which Branch Davidians were to exit on March 23rd, 24th, 27th, and 28th. When these were not met, the FBI removed and often crushed and destroyed automobiles, vans, go-carts and motorcycles. Also, "Bradleys

(tanks) were run up and down in front of the compound in what negotiators believed was a show of force" (JDR:Dennis:44); individuals who left the building without permission were "flashbanged," i.e. had loud smoke grenades thrown near them; helicopters brazenly buzzed the building; and loudspeakers blared sounds of screeching rabbits being slaughtered and played the song "These Boots are Made for Walking" which contains the line, "and if you play with matches you know you're going to get burned." (JDR:79-109)

Louis Alaniz, who snuck into Mount Carmel for several days, described "these Bradley's running around and the guys in them shooting the finger at these kids, and one incident where they actually mooned some of the girls. These people were scared. They only thing they saw was a bunch of people coming and shooting at them." [341][234] Outside expert Dr. Robert Cancro told reporters: "the threats implicit in the use of armored vehicles, razor wire, and a tightening perimeter tend to negate the positive and friendly tone attempted by negotiators. . .Even a person who isn't paranoid would interpret that as lack of consistency and good faith in negotiations. A paranoid individual needs more reassurance, not less." [342][235]

Edward Dennis wrote, "Some negotiators believe that as a result of these actions the Davidians concluded that the negotiators had no influence over the decision makers and that the FBI was not trustworthy." (JDR:Dennis:45) Dick DeGuerin told reporters, "They're still intimidated by the FBI. We're not coming out until we know the media are going to be there." [343][236] And Balenda Gamen explained why many Branch Davidians did not exit or send their children out after this point: "Because we're a very arrogant, proud nation of people. You challenge Americans to defend their property, and they're probably going to do that. The bottom line is, if you truly believe in what you are doing that passionately, you don't send your children out to the enemy." [344][237] According to Louis Alaniz, "Koresh kept members in line by threatening to force them to leave the compound." [345][238]

To show his lack of concern about the government's harassment, at one point Steve Schneider declared "you can burn us down, kill us, whatever." (JDR:87) According to news reports Koresh told the FBI, "If they want blood, then our blood is here for them to shed. . .We are not afraid of the government. If we have to die for what we stand for, we're going to. I don't mind if I die." [346][239] Dick DeGuerin said, "There was a collective feeling that the harassment was making them more stubborn." [347][240] During the April 28, 1993, House Judiciary Committee hearings SAC Jamar dismissed Representative Don Edwards question about whether these pressures only brought the Branch Davidians closer, saying there was "no way to drive them closer than they were."

When Representative William Hughes asked SAC Jamar which experts had recommended they use pressure tactics like blasting loud noises all night long, Jamar did not answer; he merely repeated his claim the purpose of the noise was sleep deprivation. Outside expert Nancy Ammerman also could not get a straight answer about who had recommended these pressure tactics. She notes that Drs. Miron, Krofcheck and Dietz were the most frequently consulted experts. She then complains: "It is unclear which of these consultants (if any) recommended the psychological warfare tactics (Tibetan chants, sounds of rabbits dying, rock music, flood lights, helicopters hovering, etc.). None of the persons associated with (National Center for the Analysis of Violent Crimes) with whom I have talked claims to have favored these tactics, but no one was willing to say who recommended them or how the decision was made to use them." (JDR:Ammerman:2) Who gave these orders should be investigated.

[348]6. FBI DESTROYED CRIME SCENE DESPITE COMPLAINTS

One form of harassment which had important legal implications was the FBI's moving and destroying vehicles. This enraged the Branch Davidians because they believed the vans and automobiles would prove that they had done relatively little firing at the agents hiding behind them and that BATF was responsible for most of the shooting, including of its own agents. The vehicles might also provide evidence that helicopters had shot from the air. As early as March 6th Steve Schneider had expressed fear that the government wanted to destroy evidence that would prove BATF's guilt. He told negotiators: "It wouldn't surprise me if they wouldn't want to get rid of the evidence. Because if this building is still standing, you will see the evidences of what took place." (JDR:53) Schneider's attorney Jack Zimmerman said, "There is no question that the FBI is destroying evidence. If nothing else they've moved the location of physical objects from a crime scene before they had been photographed." DeGuerin agreed. "They're destroying evidence with the bulldozers." [349][241]

The Texas Rangers were put in charge of investigating the February 28th raid. For ten days, SAC Jamar refused to allow the Texas Rangers to finish investigating the area behind Mount Carmel Center where the shootout between BATF agents and three Branch Davidians occurred. By then footprints which might help clarify who shot first had been eliminated by rain. Both Texas Rangers and BATF opposed FBI removal of the vehicles from the compound. (JDR:229) On March 23rd Assistant U.S. Attorney William Johnston wrote Janet Reno to complain. (JDR:81) The FBI then agreed to "photograph, graph and grid the portion of the compound where the vehicles sought to be moved were located" in order to preserve evidence. (JDR:255) However, the Justice report does not mention if the FBI told the Branch Davidians about this new policy.

[350]7. FBI PLAN TO GAS, DISASSEMBLE MOUNT CARMEL

The FBI Hostage Negotiation Training Manual asserts, "Time is always in our favor," and urges personnel not to grow impatient in hostage situations. [351][242] London Times bureau chief James Adams, author of a number of books on covert warfare, wrote about the government's handling of the standoff: "Every professional in the hostage rescue business knows that the best chance of survival for all the innocents held captive is to play out a waiting game. The theory, which has been proved again and again, is that the longer you wait, the better the chances of a peaceful resolution." In his article he quotes counter-terrorism expert Noel Koch who wrote, "If nothing is happening, that is good. The heart of negotiation is patience, and if it takes 41 or 151 days it should make no difference. To depart from that central idea is crazy." Adams questions whether the deaths were necessary and ends by saying, "those responsible must be held accountable." [352][243]

In early April Hostage Rescue Team commander Richard Rogers, who was continuing to push for more aggressive action, gave visiting FBI officials "a briefing on the use of CS gas and suggested an operation plan for such use," a plan which was soon approved by FBI Director Sessions. (JDR:256-258) The plan was to "introduce the liquid CS into the compound in stages. . .eventually walls would be torn down to increase the exposure of those remaining inside." (JDR:262-263) The report notes, "While it was conceivable that tanks and other armored vehicles could be used to demolish the compound, the FBI considered

that such a plan would risk harming the children inside." (JDR:260)

Nevertheless, Rogers' plan clearly included defacto demolition of Mount Carmel. "If all subjects failed to exit the structure after 48 hours of tear gas, then a modified CEV would proceed to open up and begin disassembling the structure at the location that was least exposed to the gas. The CEV would continue until all the Branch Davidians were located." (JDR:277-78) The FBI had their plan--and they probably did not intend to let anything stand in their way of convincing Attorney General Janet Reno to approve it.

[353]8. FBI REFUSED TO BELIEVE FINAL KORESH PROMISE TO SURRENDER

As noted above, in mid-March, after the FBI sent in the letters from lawyers and an audio tape from theologian Phil Arnold, Koresh stated that he was ready to come out. However, FBI harassment made him change his mind. A few weeks later the FBI allowed Koresh and Schneider to meet with their attorneys and they brought Koresh a 30 minute tape by Drs. Phil Arnold and Jim Tabor. There is solid evidence that as a result of these contacts, in mid-April David Koresh did indeed receive his "message from God" and that he and all Branch Davidians would have left Mount Carmel had the FBI waited only a few more days.

a. DeGuerin and Zimmerman Visited Mount Carmel

The FBI initially refused to allow the Branch Davidians to consult with attorneys. In mid-March U.S. District Judge Walter S. Smith Jr. rejected requests from lawyers contacted by Branch Davidian family members to enter the compound and negotiate for them, writing, "One simply cannot point a gun, literally or figuratively, at constitutional authority and at the same time complain that constitutional rights are being denied." [354][244] (Judge Smith is now presiding over the Branch Davidians' trial.) However, a number of attorneys, including "radicals" like Kirk Lyons of North Carolina's Cause Foundation, had filed habeas corpus suits, and the FBI may have feared some appellate judge might let them have access to Koresh. [355][245]

Koresh's mother retained Houston criminal defense attorney Dick Deguerin who was well known for clients he'd defended in highly publicized homicides, including Muneer Deeb who was acquitted on charge of killing three teenagers in Waco. [356][246] The Schneider family retained another respected criminal attorney, Jack Zimmerman. Both DeGuerin and Zimmerman have frequently told the press that the Branch Davidians had very "triable" cases, might have been acquitted by juries on the grounds of self-defense, and were committed to leaving Mount Carmel and facing juries. Koresh even allowed DeGuerin to meet with New York attorneys to discuss film and book rights to Koresh's story.

b. Drs. Arnold and Tabor Convinced Koresh to Write "Seven Seals"

Dr. Philip Arnold, executive director of Houston's Reunion Institute and an expert in apocalyptic studies and the Seven Seals, read a newspaper transcript of David Koresh's February 28th sermon on KRLD and immediately resolved to be of assistance. [357][247] He drove to Waco and explained his expertise to SAC Bob Ricks, chief aid to SAC Jeffrey Jamar. However, Ricks put Arnold off several times saying, "You could never talk Book of Revelation with him. You've never heard anything like this." An FBI agent did take Arnold's number and contacted him a few days later. Arnold returned to Waco and spoke with the agent over the phone but was never contacted by the FBI again.

This is not surprising considering negotiators March 15th decision to refuse to listen to any more "Bible babble." Dr. Arnold has lamented that the FBI "took that to be a big joke, all that talk about the Seven Seals. The Seven Seals was (Koresh's) language, and if you didn't speak that language, there was no way of showing him what he had to do." [358][248]

On March 17th Branch Davidians happened by chance to hear Dr. Arnold's five minute radio show during which he discussed the Book of Revelation. They immediately told the FBI they wanted to speak with him, but the FBI "denied the request." (JDR:Appendix C:3) Edward Dennis notes that Steve Schneider had specifically mentioned Phil Arnold as possibly being a "theologian (who) could convince ~~the~~ people that Koresh was wrong" about their being in the Fifth Seal of death. (JDR:Dennis:15) The FBI's only concession was to send in a March 19th tape of Arnold's radio show. [359][(JDR:186)]

On April 1st Phil Arnold and Dr. Jim Tabor, a professor of religious studies at the University of North Carolina who also specializes in apocalyptic studies, did a telephone interview on the Ron Engelman show. During it they explained to Koresh that the "little season" that the Branch Davidians needed to wait was not merely a couple of months, but might be a much longer time. They also talked about how great prophets like Jeremiah, John, and Paul had gone to prison--and had produced great literature there.

Dr. Arnold gave this tape to Dick DeGuerin who brought it to Koresh on April 4th. Koresh told his attorneys everyone would be coming out after Passover, which would last 10 days. On April 9th and 10th he delivered to the FBI two defiant letters filled with Biblical allusions-- ones which the FBI has used to excuse their assault on Mount Carmel.

However, on April 14th Koresh wrote a very different letter. In it he revealed that God finally had spoken to him and that they all would come out as soon as he had completed a short book on the Seven Seals. The letter to Koresh's attorney Dick DeGuerin reads, in part:

As far as our progress is concerned, here is where we stand:

. . .I am presently being permitted to document, in structured form, the decoded messages of the Seven Seals. Upon the completion of this task, I will be freed of my "waiting period." I hope to finish this as soon as possible and to stand before man to answer any and all questions regarding my actions.

I have been praying so long for this opportunity; to put the Seals in written form. Speaking the truth seems to have very little effect on man.

I was shown that as soon as I am given over into the hands of man, I will be made a spectacle of, and people will not be concerned about the truth of God, but just the bizarrity of me - the flesh (person).

I want the people of this generation to be saved. I am working night and day to complete my final work of the writing out of the "these Seals."

I will demand the first manuscript of the Seals be given to you. Many scholars and religious leaders will wish to have copies for examination. I will keep a copy with me. As soon as I can see that people, like Jim Tabor and Phil Arnold have a copy I will come out and then you can do your thing with this Beast.

I hope to keep in touch with you by letter, so please give your address.

We are standing on the threshold of Great events! The Seven Seals, in written form are the most sacred information ever! David Koresh

On April 16th Koresh told the FBI he had finished the First Seal (JDR:107) and "asked for a word processor and batteries to speed production of the other six chapters." [360][249] At an October 15, 1993, congressional briefing sponsored by the Ross & Green consulting group, Dr. Tabor said that Koresh and Ruth Riddle, who was typing it for him, worked until 9 p.m. Sunday night, April 18th, putting the final touches on the First Seal, which was also the longest. That meant they would be leaving Mount Carmel in a few days. Tabor said, "they were so happy that night, shades of the last supper."

During the April 19th fire Ruth Riddle managed to jump from a hole in the second floor wall. She carried Koresh's First Seal on a computer disk. The FBI immediately confiscated the disk, but later released it. Having read it, Tabor declared, "It's intriguing. It's not my own faith system, but it's coherent, logical and quite moving to read. What he lived and died for."

After the April 19th FBI assault and the death of Koresh and 80 or more other Branch Davidians, Drs. Arnold and Tabor severely criticized the FBI. "I think they were convinced from the start that he was evil, horrible and wicked. . .They didn't take his religion seriously enough. They needed to have input from people who are trained in biblical symbols."

c. FBI and Cult Busters Ridiculed Koresh Promise

According to Tabor, as soon as they got Koresh's April 14th letter, the FBI began ridiculing Koresh, saying things like, "How long will it take a high school dropout to write a book." The April 26, 1993, Time (which went to press before the fire) devoted a whole article to Koresh's promise to write the book, including a long paragraph explaining Dr. Arnold's views on Koresh's possible interpretation of the Seven Seals. However, it also described the FBI's frustrations because it had taken Koresh 4 days to write 30 pages. "So, FBI men sourly note, a surrender may be months off, even if Koresh keeps his word. . .`No one at our place is holding his breath.' said FBI special agent Dick Swensen." An FBI official, speaking on the condition of anonymity, told the Washington Post, "Were we going to sit there and wait for this guy to finish his treatises on the Seven Seals?. . .Were we going to sit there status quo for another month, another two months, another six months?" [361][250] Bob Ricks' statement on April 16th sums up the FBI attitude: "We are going to get them. . .to bring them before the bar of justice for the murder of our agents. They're going to answer for their crimes. That's the bottom line to this whole thing, they're going to come out." [362][251]

d. FBI Excuses After the Fire

After the April 19th fire the FBI claimed that it had evidence that Koresh's contacts with his attorneys were just stalling techniques. SACs Jamar claimed that listening devices heard cult members joking about DeGuerin's involvement being a ruse [363][252] , a claim the Justice report repeats (JDR:143-144) Koresh attorney Dick DeGuerin "disputed claims by FBI spokesman Bob Ricks that cult members had called meetings with the attorneys `a fiasco'. `The real fiasco was the attack on the compound with tear gas and ripping the walls apart.

. .If you consider that we got an absolute agreement signed that they would come out peacefully. . .'" [364][253]

Jamar also told the press, "This latest business with the Seven Seals, we have intelligence that it was just one more stalling technique." [365][254] Dr. Phil Arnold challenged the FBI's allegation that electronic monitoring of Koresh's conversations proved he wasn't serious. He said Koresh's "vocabulary was not formed by high school, college or television. It's formed by the King James Version of the Bible, which he had memorized. It would take those of us who are similarly familiar or trained in its constant usage to be able to understand him on a depth level where the subtleties of the language come through." [366][255] Many have commented that the FBI's monitoring devices must not have been very good if they could not hear Koresh's loud dictating of his book to Ruth Riddle.

The only evidence the Justice report presents that Koresh's writing his book on the Seven Seals was a stalling technique was provided by (defacto cult buster) Dr. Murray S. Miron. Concerning the all-important April 14th letter, "Dr. Miron noted that Koresh's discussion in the letter appeared to be a ploy designed to buy more time for Koresh." He concluded that he did not believe "there is in these writings any better, or at least certain, hope for any early end to the standoff." (JDR:175-176) Marc Breault alleges the FBI "showed us Koresh's letters, which were nothing more than scriptural ramblings written down. After reading those we became more and more convinced that Koresh had no intentions of coming out. We told the FBI as much. . .We told the FBI that Koresh was starting to lose his grip and that he would probably end the siege violently." [367][256]

After DeGuerin, Arnold and Tabor held an October press conference to announce the release of Koresh's book, "Bill Carter, an FBI spokesman, said the agency could not comment on the tract because of pending cases against 11 Branch Davidians." [368][257] More disturbing than the FBI's reliance on Miron, and possibly Breault, to interpret Koresh's April 14th letter is strong evidence that the FBI never showed Attorney General Reno the April 14th letter so she could judge for herself whether Koresh intended to surrender!

[369]9. FBI MISLED JANET RENO ON NEED FOR AND DANGERS OF ASSAULT

On April 12, 1993, the FBI presented the tear gas plan to Attorney General Janet Reno for approval. "Why now? Why not wait?" she asked. On April 16th she still disapproved the plan--until an all important conversation with FBI Director William Sessions. Whatever he said to her swayed her to the point that she asked for a documented statement of why the plan should go forward. On April 17th she received the documents. "She read only a chronology, gave the rest of the materials a cursory review, and satisfied herself that `the documentation was there'." (JDR:272) She then approved the gassing plan. The next day she informed President Clinton of her decision. Below are the known and admitted arguments the FBI used to break down Reno's resistance to the plan. Despite Janet Reno's assertions to the contrary, we can see that the FBI clearly did mislead, and perhaps even bully, her into approving their plan.

a. FBI Misinformed Reno about Progress of Negotiations

On April 15th Associate Attorney General Webster Hubbell had a two hour conversation with chief FBI negotiator Byron Sage. "Hubbell recalls that Sage said further negotiations with the subjects in the compound would be fruitless. . .Sage further advised Hubbell that

Koresh had been disingenuous in his discussions with Sage about the `Seven Seals.'. . .Hubbell recalls Sage saying he believed there was nothing more he or the negotiators could do to persuade Koresh to release anyone else, or to come out himself. . .Hubbell advised the Attorney General about this conversation." (JDR:270-271) It is unknown if Sage told Hubbell about the April 14th letter or read him its contents.

Outside expert Alan A. Stone, M.D. writes: "It is unclear from the reports whether the FBI even explained to the AG (Reno) that the agency had rejected the advice of their own experts in behavioral science and negotiation, or whether the AG was told that FBI negotiators believed that they could get more people out of the compound by negotiation. By the time the AG made her decision, the noose was closed and, as one agent told me, the FBI believed they had `three options - gas, gas, and gas.'" (JDR:Stone:10-11)

This is not surprising, since Hostage Rescue Team commander Richard Rogers himself met with Reno. "Rogers and others offered the following additional reasons (for the assault): Koresh had broken every promise he had made; negotiations had broken down; no one had been released since March 23rd; and it appeared that no one else would surrender." (JDR:269) In effect, HRT Commander Rogers, who had pushed SAC Jamar to use the tactical harassment that had so disrupted negotiations, now informed Attorney Janet Reno that negotiations were not working! Janet Reno told the April 28, 1993, House Judiciary Committee hearing: "Throughout this 51-day process, Koresh continued to assert that he and the others inside would at some point surrender. However, the FBI advised that at no point did he keep his word on any of these promises." It is not known if Rogers' and higher FBI officials' impatience to end the standoff was related to their possible fear the upcoming Weaver trial would bring out facts about FBI misconduct in that case-- however, that should be investigated.

b. FBI Withheld April 14th Promise to Surrender Letter from Reno

Dr. James Tabor lamented at both the October 15 congressional briefing and the November 22, 1993, American Academy of Religion panel that, as far as he knew, the FBI never gave Janet Reno the details of Koresh's decision to write the his book about the Seven Seals or a copy of his April 14th letter. As we can see below, there is no evidence that the FBI showed this document--what Dick DeGuerin called "an absolute agreement signed that they would come out peacefully"--to Attorney General Janet Reno. Nor does it seem to have been shown to FBI Director Sessions or FBI Deputy Director Clarke before the April 19th assault- -or to reporters or even to outside experts after the fire. Evidence of this follows.

* The Justice report states only, "The FBI provided the Attorney General with copies of the memoranda prepared by Dr. Miron and Dr. Krofcheck and SSA Van Zandt analyzing Koresh's April 9th letter." (JDR:274)

* At the April 28, 1993, House Judiciary Committee hearing, FBI Director Sessions insisted that the last Koresh letter was related to Passover, which would have been much earlier in April.

* At the same hearing, FBI Deputy Director Clarke mentions only Koresh's April 9th and 10th letters when he declares that Koresh had "his own game plan" and the "snare had been set."

* On April 21, 1993, senior FBI officials held a background briefing for reporters to explain their decision to gas Mount Carmel. They included Koresh's April 9th and 10th letters as examples of "his

irrational and `insane' behavior during negotiations." [370][258] However, there is no indication they showed reporters the April 14th letter. (The only publication we found which mentioned or quoted the letter after the fire was Time, in it's May 3, 1993 issue. However, Time had been in touch with Dr. Phil Arnold and quoted him extensively in an earlier article.)

* The Justice report does include the April 14th letter after the April 9th and 10th letters in an appendix. However, only Koresh's April 14th phone call is mentioned in the chronology for that date (JDR:105), while the April 9th letter is quoted extensively (JDR:99-100) and the April 10th letter is analyzed. (JDR:102) The Justice report only mentions the letter in the section where Mr. Miron dismisses it as a "ploy." The report inaccurately describes it as "Koresh's request that the FBI give him time to finish his manuscript about the Seven Seals." (JDR:174)

* Outside expert Lawrence E. Sullivan quotes at length from Koresh's April 9th and 10th letters to the FBI, trying to find evidence that Koresh would have come out--yet he never mentions the April 14th letter! He does quote extensively from the earlier, defiant letters, ending, "In the briefing the letter seems to play the role of a last straw, measuring Koresh's intransigence and provoking the FBI to escalate their interventions." (JDR:Sullivan:5-6) Sullivan's reference to the "briefing" indicates that the letter was not discussed during the Justice Department's briefing of the outside experts! Even Edward Dennis, who was appointed to be the most prominent reviewer of the Justice report, refers only to the April 9th and 10th letters and Koresh's April 14th phone call. (JDR:Dennis:26) Only one outside expert, Nancy Ammerman, even refers to the letter. However, it is unknown if she got it from the Justice Department or directly from Dr. Philip Arnold. Whoever withheld the April 14th letter from the FBI Director and the Attorney General Reno ultimately may be responsible for the massacre of the Branch Davidians.

c. FBI Told Reno CS Gas is Safe

CS gas is a white crystalline powder that causes involuntary closure of eyes, burning of the skin, respiratory problems and vomiting. Amnesty International in October of 1992 said that CS is "particularly dangerous when. . .launched directly into homes or other buildings." The United States was one of 100 countries that signed an agreement banning the use of CS gas in war during the Chemical Weapons Convention in Paris in January of 1993. FBI officials did not know this when they recommended it. [371][259]

The goal of the gassing was to drive Branch Davidians out of the house. However, the U.S. Department of the Army manual on Civil Disturbances (October, 1975, FM19-15) notes: "Generally, persons reacting to CS are incapable of executing organized and concerted actions and excessive exposure to CS may make them incapable of vacating the area."

Alan A. Stone was particularly critical of the FBI's decision to use CS gas against the Branch Davidians, especially the children: "When asked, the Justice Department was unaware whether the FBI had even questioned whether these intentional stresses would be particularly harmful to the many infants and children in the compound. Apparently, no one asked whether such deleterious measures were appropriate, either as a matter of law enforcement ethics or as a matter of morality, when innocent children were involved. . .I can testify from personal experience to the power of C.S. gas to quickly inflame eyes, nose, and throat, to produce choking, chest pain, gagging, and nausea in healthy adult males. It is difficult to believe that the U.S.

government would deliberately plan to expose twenty- five children, most of them infants and toddlers, to C.S. gas for forty-eight hours. . .The official reports are silent about these issues and do not reveal what the FBI told the AG about this matter. . .Based on my own medical knowledge and review of scientific literature, the information supplied to the AG seems to minimize the potential harmful consequences for infants and children." (JDR:Stone:29-30)

Dr. Stone quotes a case of an unprotected child's two to three hour exposure to CS gas which resulted in first degree facial burns, severe respiratory distress typical of chemical pneumonia and an enlarged liver. "The infant's reactions reported in this case history were of a vastly different dimension than the information given the AG suggested. . .Whatever the actual effects may have been, I find it hard to accept a deliberate plan to insert C.S. gas for forty-eight hours in a building with so many children. It certainly makes it more difficult to believe that the health and safety of the children was our primary concern." (JDR:Stone:35)

As for whether CS gas is flammable, "one manufacturer of CS gas. . .said. . .he was not certain if the chemical--when spread as a fine powder throughout buildings and exposed to fire--would act as a catalyst for flames." [372][260] Chemical consultant Dr. Jay Young said that a mixture of CS gas and air could be ignited, but only if the ratio of the gas and air was within a very narrow range. [373][261] Attorney Jack Zimmerman, who spoke with military experts, asserted, "All three types of CS can spontaneously ignite if occurring in a high-enough concentration in a confined space that is exposed to open flame." [374][262] Nevertheless, "the FBI informed (Reno) that the tear gas would not cause a fire." (JDR:266)

The two methods of delivery which the FBI used are also dangerous. The Mark-V system, "a liquid tear gas dispenser that shoots a stream of liquid tear gas (propelled by noncombustible carbon dioxide) approximately 50 feet for a duration of approximately 15 seconds," (JDR:287) might suffocate a child in direct line of fire. Even more dangerous were the "ferret liquid tear gas rounds", more than 400 of which were used to deliver gas. (JDR:277,292,294)

The Justice report admits the ferret tear gas rounds, which it claims are not "pyrotechnic," are "launched by a M79 grenade launcher," and that, "when fired from 20 yards or less the rounds are capable of penetrating a hollow core door." (JDR:277) According to Dick DeGuerin, survivors claim that during the gas attack the grenades did in fact penetrate multiple walls before exploding.

d. FBI Pushed Reno's Child Abuse "Hot Button"

The Justice report states: "during the week of April 12, someone had made a comment in one of the meetings that Koresh was beating babies. When Reno inquired further, she had the clear impression that, at some point, since the FBI had assumed command and control of the situation they had learned that the Branch Davidians were beating babies. She had no doubt that the children were living in intolerable conditions. Moreover, she had been told that Koresh had sexually abused minors previously, and that he continued to have sex while recovering from his wounds." (JDR:275) Dr. Park Dietz wrote in a memorandum: "Koresh may continue to make sexual use of any female children who remain inside." (JDR:223)

FBI Director Sessions went on at length during the April 28, 1993, House Judiciary Committee hearings about Victoria Hollingsworth's allegation that her 13- or 14-year- old daughter, who she had left inside Mount Carmel when she left in March, was one of David Koresh's

child brides. We must wonder if this is one of the things Sessions told Reno during the private phone conversation which evidently convinced her to accept the gassing plan. To our knowledge, no other government agent or official has made this specific allegation. Despite all this discussion of child abuse, the Justice report relates that in retrospect Reno "did not believe that anyone at the FBI deliberately played up the issue of child abuse." (JDR:275-276)

e. FBI Threatened to Withdraw Hostage Rescue Team

On April 14th Hostage Rescue Team commander Richard "Rogers advised that his team had received sufficient breaks during the standoff that they were not too fatigued to perform at top capacity in any tactical operation at the time. He added, however, that if the standoff continued for an extended length of time, he would propose that the HRT stand down for rest and retraining. When Reno asked about using SWAT teams to take the place of the HRT, she was told that the HRT's expertise in dealing with the powerful weapons inside the compound, driving the armored vehicles, and maintaining the security of the perimeter was essential." She was also discouraged from using the Army's "Delta Force" or other forces because of posse comitatus restrictions. (JDR:268) The FBI warned Reno that "Koresh might actually mount an offensive attack against the perimeter security, with Branch Davidians using children as shields. This would have required the best trained forces available to the FBI." (JDR:269)

On April 15th FBI chief negotiator Byron Sage told Associate Attorney General Webster Hubbell that "law enforcement personnel at Waco were getting tired and their tempers were fraying." Hubbell passed this information on to Reno. Upon hearing on April 16th that Reno had turned down the gassing plan, Deputy Assistant Attorney General Mark Richard told Hubbell "that the FBI would not be pleased, that they would nonetheless accept the decision, and that they may then talk in terms of withdrawal." (JDR:271) Despite these threats to withdraw the FBI Hostage Rescue Team, the Justice report asserts Reno believes, "The FBI did not try to `railroad' her." (JDR:275-276)

f. FBI De-emphasized Suicide

BATF had used rumors that the Branch Davidians might commit suicide to excuse a paramilitary raid against the Branch Davidians. And the FBI had alluded to the possibility of mass suicide, as when SAC Bob Ricks told the press in March, "We're very concerned that part of Koresh's grand scheme is he would like to see a large number of his people die, which would be justification for his pronouncements of the fulfillment of the Scriptures." [375][263] However, when it came to promoting their gassing plan, mass suicide suddenly became a minor issue. "(T)he FBI told the Attorney General they regarded the possibility of mass suicide as remote." (JDR:274) Attorney General Reno told the April 28, 1993, House Judiciary Committee hearing "she would not have given the go-ahead if she thought cult members would commit suicide. She said the FBI had interviewed former Branch Davidian members throughout the world and had concluded Mr. Koresh would not kill himself or lead a mass suicide effort." [376][264] She also asserted during the October 8, 1993, Justice Department press conference on Waco, "I don't think there were any misleading statements about suicide because we talked about it..." [377][265] FBI Director Sessions also has said "none of us expect them to commit suicide." [378][266]

The Justice report does not mention if FBI agents ever told Sessions or Reno that: "one former resident who left during the standoff told investigators that on March 2nd Koresh intended to leave the compound with his followers and commit mass suicide, until Koresh changed his mind when God told him `to wait.'. . .On March 5th, 1993, released

child Joan Vaega had a note pinned to her clothes stating that her mother (Marguerite Vaega) would be dead by the time other relatives had read the note." Nor is it known if FBI agents had told Sessions and Reno they were aware of Kiri Jewell's allegations about having been taught to commit suicide. (JDR:Dennis:37)

Even if there was no mass suicide, the FBI's withholding such evidence of potential suicide from Sessions and Reno certainly misled them. Moreover, the FBI's mere plan to gas and demolish the building was as irresponsible as yelling "jump" to a person threatening to jump from a ledge or waving a red flag at a raging bull. Dr. Stone, who believes the Branch Davidians did commit suicide, wrote he is "convinced that the FBI's noose-tightening tactics may well have precipitated Koresh's decision to commit suicide and his followers to this course of mass suicide. The official reports have shied away from directly confronting the possible causal relationship." (JDR:Stone:15)

g. FBI Assured Reno "This Is Not D-Day"

The Justice report states: "The action was viewed as a gradual, step-by-step process. It was not law enforcement's intent that this was to be `D-Day.' Both the Attorney General and Director Sessions voiced concern for achieving the end result with maximum safety. (FBI Deputy Director Floyd) Clarke made it clear that the goal of the plan was to introduce the tear gas one step at a time to avoid confusing the Branch Davidians and thereby maintain the impression that they were not trapped." (JDR:267) Reno asserted at her April 19th press conference, "Today was not meant to be D-Day. We were prepared to carry it out tomorrow and the next day, and do everything we could to effect a peaceful resolution of this matter." [379][267] In her April telephone briefing of President Clinton, Reno "emphasized that the operation was intended to proceed incrementally, and that it might take two or three days before the Branch Davidians surrendered. The Attorney General told the President that Monday, April 19th was not `D-Day'." (JDR:280)

The Justice report states that during planning of the assault, Reno said she "made it clear that if children were endangered, i.e. if they were held up to windows and threatened to be shot, the FBI was to `back off.'" She recalls her exact words were "Get the hell out of there. Don't take any risks with the children." (JDR:273) Reno told the April 28, 1993, House Judiciary Committee hearing: "I directed that if at any point Koresh or his followers threatened to harm the children, the FBI should cease the action immediately. Likewise, if it appeared that, as a result of the initial use of teargas, Koresh was prepared to negotiate in good faith for his ultimate surrender, the FBI was to cease the operation."

h. Reno's "Rules of Engagement" Authorized "D-Day"

Despite Janet Reno's concern for the safety of the Branch Davidians and their children and her desire to "effect a peaceful resolution of this matter," she authorized rules of engagement which ensured the resolution would be violent.

It is unknown if the FBI told Reno about Koresh's early threats to "blow the tanks to pieces" if agents attacked Mount Carmel again. He had threatened, "if something messes up on this side or on your side, then World War III again." (JDR:45) As late as April 18th, when tanks were moving Koresh's favorite automobile, agents reported seeing a sign in the window reading, "Flames await." (JDR:109) However, Reno did tell the House Judiciary Committee hearing she thought the possibility of the Branch Davidians firing on the tanks was the most important "contingency." If they did so, she had authorized the FBI

"to return fire." She also said that she thereafter would leave decisions up to the FBI because she was not "an expert in tactical law enforcement."

The Justice report states, "If during any tear gas delivery operations, subjects open fire with a weapon, then the FBI rules of engagement will apply and appropriate deadly force will be used," (JDR:288) and "It was also agreed that once she approved the overall plan, decisions would be made on the scene. Although she had the specific authority to stop the action and tell the FBI to leave, tactical decisions were to be made by law enforcement officers in Waco." (JDR:273) It is difficult to believe that Janet Reno meant that once the Branch Davidians fired, the FBI could do what it pleased, women and children be damned--yet, in effect, that is what she authorized.

Evidently, Reno did not make the rules of engagement clear to President Clinton. He told reporters during his April 20th press conference: "The plan included a decision to withhold the use of ammunition, even in the face of fire, and instead to use tear gas that would not cause permanent harm to health, but would, it was hoped, force the people in the compound to come outside and to surrender. . .I was further told that under no circumstance would our people fire any shots at them even if fired upon."

FBI agents have not admitted to firing any guns on April 19th--but they did fire over 400 dangerous ferret grenades. However, Reno's instructions gave the FBI enough leeway to begin the aggressive gassing and dismantling of Mount Carmel. Evidently, ground commanders Jeffrey Jamar and Richard Rogers did not fully explain to Reno or even their FBI superiors what kind of "tactical decisions" they might make if fired upon. Even FBI Assistant Director Larry Potts told reporters, "We thought we could induce the gas, get some people out and get the rest of the people to negotiate. We always had a fear that maybe there's going to be a few of the people who would fight with us to the very end." [380][268] On the other hand, Potts is also the official who doesn't remember approving Richard Rogers' changing the rules of engagement in the Weaver case. Whether this indicates incompetence on his part or duplicity on Rogers' part should be investigated.

If Potts or his aide Danny Coulson communicated the Attorney General's final directives that the operation be a safe one and that negotiations remain an option to the siege commanders, the directives did not "take". According to one news report: "The F.B.I. has acknowledged that it foresaw a high probability of casualties. Bob Ricks, one of the agents in charge at Waco, said the day after the fire that the assault had two basic goals: rescuing the children, and doing so without injuries to any Federal agents. `We knew that the chances were great that the adults would not come out unharmed,' Mr. Ricks told the Dallas Morning News. `So we felt that if we got any of them out safely, that would be a great bonus.'" [381][269] And despite the Branch Davidians signalling they wanted to negotiate that morning, during the 10:30 a.m. FBI press conference on April 9th, SAC Ricks said, "We're not negotiating. We're saying come out. . .this matter is over." [382][270]

[383]10. QUESTIONS ABOUT PRESIDENT CLINTON'S HOSTILITY TOWARD THE BRANCH DAVIDIANS

The Justice report devotes a section to describing President Clinton and the White House's involvement in the siege and the FBI decision to assault Mount Carmel. Clinton initially supported negotiations. When

his chief counsel Bernard Nussbaum first told Clinton about the plan to gas Mount Carmel he reminded the President that the decision was "a Department of Justice call, not a White House call," and Clinton responded that he had great confidence in the Attorney General and the FBI. When Janet Reno called him on April 18th regarding the plan he told her he supported her decision. (JDR:241-248)

What we wonder about is Clinton's hostility towards the Branch Davidians. In his April 20th news conference he growled that Janet Reno should not have to resign "because some religious fanatics murdered themselves." Two days later he asserted, "I do not think the United States government is responsible for the fact that a bunch of fanatics decided to kill themselves." Also, Janet Reno told the House Judiciary Committee hearing that early April 20th, "The second call I got was from the president of the United States, saying, `That-a-girl'." [384][271] If this was an exact quote, it would also seem to be a highly insensitive remark.

One explanation might be Clinton's having been influenced by anti-cult propaganda, evidenced by this anti- cult comments quoted in an earlier section. Another explanation might be Clinton's past association with agents wounded and killed on February 28th. In a March 18th, 1993 speech before employees of the Treasury Department Clinton said, "My prayers and I'm sure yours are still with the families of all four of the Alcohol, Tobacco and Firearms agents who were killed in Waco--Todd McKeehan and Conway Lebleu of New Orleans, Steve Willis of Houston, and Robert Williams from my hometown of Little Rock. Three of those four were assigned to my security during the course of the primary or general election." The Wall Street Journal reported that Clinton wanted "to know the condition of one particular ATF agent who was wounded at Waco: Jay William Buford, an acquaintance of his from Arkansas." [385][272] As we know, Resident Agent-in-Charge Buford was a primary investigator and planner in the botched February 28th raid on Mt. Carmel. Also, Clinton may have been angered by potential criticism of Clinton family friend Associate Attorney General Webster Hubbell. He was deeply involved in Waco decision-making and the highest ranking official in the FBI Operations Center during the last fatal April 19th attack.

The New York Times wrote in its October 12, 1993, editorial, "The Waco Whitewash," "the report is silent on the most glaring deficiency of the tragic episode: the lack of judgement at the top and the reasons for it."

## [386]11. CHRONOLOGY OF APRIL 19TH GASSING, DEMOLITION AND FIRE

During the morning of April 19, 1993 five tanks [387][273] flying American flags began the attack on Mount Carmel Center. Ironically, the Branch Davidians were flying the Star of David on this day, the 50th anniversary of the Nazi attack on the Warsaw ghetto. This was also "Patriots' Day"- -the 217th anniversary of the first battle of the American Revolution, when a British expedition to raid Revolutionary Minutemen weapons stockpiles in Concord, Massachusetts resulted in the Battles of Lexington and Concord. [388][274]

This chronology only outlines the FBI's prolonged and brutal attack on the Branch Davidians. Because the Committee for Waco Justice did not have the resources to obtain from news networks the full seven-hour footage of the tank attack and fire, and because the Justice report's account is very sketchy, this chronology may contain gaps and inaccuracies. Our chronology was assembled from what the Justice report text did reveal, from its infrared photos, and from newspaper

accounts, survivors' reports, and news video tapes. Unless otherwise noted, all times and events are from the Justice report.

The FBI took aerial infrared video tapes of the gassing, demolition and fire at Mount Carmel. On infrared photos, heat shows up as light, but the light may not show up for a minute or more after a fire first erupts. We include here two of the eight still shots of the infrared video tape from the Justice report. When the government finally releases all this footage, the public will finally see the true savagery of the assault that led to the deaths of 80 or more people.

5:55 a.m.--CEV1 goes to front left and CEV2 to right side of building.

5:59--FBI tells Steve Schneider gas attack is about to begin. He throws phone out the window.

6:00--FBI announces over loudspeakers "If you come out now, you will not be harmed." and "You are under arrest."

6:00--CEV1 ordered to inject gas using Mark-5 system.

6:00 Approx.--Bradley vehicle delivers ferret tear gas rounds into "unoccupied construction area near the main structure" (tornado shelter) (Justice report and video footage)

6:04--Agents allege the Branch Davidians are firing on the tanks. FBI opts to speed up delivery of gas and demolition of building. Tank punches first hole, 8 feet high and 10 feet wide in middle front building, left of the front door. [389][275]

6:07-6:31--CEVs poke holes in building and insert gas at front left and right side of building; 4 Bradleys deploy ferret tear gas rounds through the windows. Tanks run back and forth over buried bus tunnel leading to tornado shelter and collapse debris over the tunnel, denying access to it. (Videotape and Fire Report)

6:24--FBI told Davidians to hang out a white flag if phone is not working; they hold a white banner, pull it back and replace with dark blanket. FBI gives them two minutes to surrender.

6:45-7:04--Tanks deliver more ferret tear gas rounds to every part of the building.

7:30--CEV1 rips hole in front right first floor of building and inserts gas.

7:58--CEV2 breaches a hole in the second floor back right corner of building. CEV rips into second floor womens' quarters. [390][276]

9:10--Branch Davidians hang out banner, "We want our phones fixed."

9:17--CEV1 breaks through the front door and agents can see both the upstairs and the downstairs.

9:28-10:00--CEV1 enlarges the opening in middle front of building. CEV2 breaks down and a new CEV2, which is not equipped with tear gas, replaces it and breaches the rear side of the building near the gymnasium.

9:49--FBI says phone will be connected only if there is a clear signal it is for surrender purposes. The Davidians give no signal.

9:54--Graham Craddock gets the phone, indicates it has been severed.

FBI does not reconnect it.

10:00--Attorney General Janet Reno leaves the Justice Department for a speech in Baltimore.

10:00-11:00--Bradleys continue delivering ferret tear gas rounds through various openings.

11:00--Janet Reno calls President Clinton.

11:30--Agents try to call into compound. New CEV-2 breaches back side of compound near the gymnasium. (Justice report) Tank rams middle front of building and something that looks like flame is seen comes from boom of tank. (Assistant to Attorney General R. Scruggs 10/8/93 press conference.)

11:40--Last ferret tear gas rounds delivered. Unknown time--Tank boom rams through window and wall of David Koresh's second story bed room.

11:45--12:05 p.m. Approx.--Tank rams whole north back of gymnasium, collapsing half of its roof at approximately

11:59. (Justice report account, infrared photos and news footage) Tank rams back wall of concrete room and dining room and blocks back exits. (Survivors' reports) Tank may have started a fire here. 11:59-12:02 Approx.--Largest tank smashes through front door. (See Infrared Photo #1) Survivors say tank knocked over lanterns and crushed a propane tank. Survivors say tank started a fire here.

12:00 Approx.--Removal of part of the southeast corner of exterior wall, ground floor level. (Fire Report, news report [391][277] and photos)

12:01--A loudspeaker message mocks Koresh: "David, we are facilitating you leaving the compound by enlarging the door. David, you have had your 15 minutes of fame. . .Vernon is no longer the Messiah. Leave the building now."

12:06 (12:08 in Justice Report)--Tank rams second story, right front. "A few minutes later, from the section of the building, a flicker of orange could be seen." [392][278] Video footage shows smoke coming from the building and what appears to be an agent riding on top of this tank. Survivor says tank started a fire here.

12:07:41--Infrared photo indicates fire on second floor, right front.

12:08:11--Infrared photo shows large fire on back wall near dining room. Tank can be seen sitting behind collapsed gymnasium wall.

12:09:25--Infrared photo shows fire in front door/piano area.

12:09--CNN announcer says "This is a roaring fire. This fire is really burning out of control." [393][279]

12:09:50--Infrared photo shows fire near window of chapel; fire in front door/piano area is well-developed. (See Infrared Photo #2)

12:10--An agent 300 yards from building reports seeing man start fire near piano, near front door.

12:10:22--Gymnasium engulfed in fire. (Fire Report)

12:10:40--Infrared photo shows room between chapel and collapsed gymnasium on fire and wall near dining hall fully inflamed. 12:13--FBI

calls fire department.

12:20--A Houston Chronicle April 20, 1993, photo shows more than half of building fully engulfed in fire.

12:25--Agents report sounds of gunfire inside Mount Carmel Center.
12:34--Fire vehicles arrive.

12:40-1:20 Approx.--Tanks with plows push remaining walls and debris into rubble of Mount Carmel.

12:41--Fire vehicles approach remains of building. A Houston Chronicle April 20, 1993, photo shows most of Mount Carmel is completely destroyed.

[394]12. FATAL DECISION TO ESCALATE TO DEMOLITION

As we have seen, Attorney General Janet Reno directed that the operation was to proceed incrementally. She had specified that negotiations should remain an option and that the FBI should pull back if there was a chance the children would be harmed. However, she also had agreed that if the Branch Davidians fired on the tanks, the FBI would be allowed to return fire and the ground commanders could make tactical decisions. The Attorney General or, it is assumed, anyone delegated that power, could still call off the assault at any time. Again, it is unknown if she knew of FBI expectations that "the chances were great that the adults would not come out unharmed."

The Justice report mentions, "On Monday morning, the Attorney General and several senior Justice Department representatives gathered with senior FBI officials in the FBI SIOC (Strategic Information Operations Center) , where they monitored events throughout the morning via CNN footage and a live audio feed directly from the FBI forward command post in Waco." (JDR:285) The report does not mention who these officials in the Washington FBI Operations Center were--nor did a number of news reports we read. It was revealed during the April 28, 1993, House Judiciary Committee hearing that two of them were Associate Attorney General Webster Hubbell and Assistant Deputy Attorney General Mark Richard. After Reno left for a speech at 10:00 a.m., they were the highest ranking officials in the FBI Operations Center. They remained in phone contact with ground commanders throughout the siege. Despite Justice Department claims that the ground commanders would make tactical decisions (JDR:273), it is difficult to believe that these high officials were not consulted at crucial junctures. a. FBI Believed April 19th Was "D-Day"

It seems clear that FBI siege commander Jamar, HRT commander Rogers and chief negotiator Sage did have every intention of making April 19th "D-Day." The text of the script that chief negotiator Sage read to the Branch Davidians over the loud speaker throughout the gassing illustrates this. (Emphasis below is ours.) "We are in the process of placing tear gas into the building. This is not an assault. We are not entering the building. This is not an assault. Do not fire your weapons. If you fire your weapons, fire will be returned. Do not shoot. This is not an assault. The gas you smell is a non-lethal tear gas. This gas will temporarily render the building uninhabitable. Exit the compound now and follow instructions. You are not to have anyone in the tower. The tower is off limits. No one is to be in the tower. Anyone observed to be in the tower will be considered to be an act of aggression and will be dealt with accordingly. If you come out now, you will not be harmed. Follow all instructions. Come out with your hands up. Carry nothing. Come out of the building and walk up the

driveway toward the Double-E Ranch Road. Walk toward the large Red Cross flag. Follow all instructions of the FBI agents in the Bradleys. Follow all instructions. You are under arrest. This standoff is over. We do not want anyone hurt. Follow all instructions This is not an assault. Do not fire any weapons. We do not want anyone hurt."

b. FBI Alleged Branch Davidians Shoot Back

It is questionable whether the Branch Davidians could have understood the FBI saying that "this is not an assault." Fire survivor Ruth Riddle explains, "I remember hearing crackling-type voices coming over the speaker. It was hard to make out what they were saying. Some kind of warning. And the next thing we knew they were ramming into the building." [395][280] Whether or not they could hear what the FBI was saying, the Branch Davidians must have considered the gas, the rampaging ferret rounds, and the tanks smashing into the building to be an assault--and the fulfillment of the 5th Seal, where they all would be killed. Some Branch Davidians may have decided to fight what the saw as a murderous assault by "Babylonians." Surviving Branch Davidians deny that they fired at the tanks. The New York Times reported that FBI "eavesdropping devices picked up someone saying `don't shoot until the very last minute' and `Stay low, stay ready and loaded' and `have you been gassed yet?'" [396][281] These alleged statements were not mentioned in the Justice report. No FBI agent who alleges hearing shots has been questioned under oath about their statements.

As soon as FBI agents reported automatic and semi-automatic gun fire, the "FBI"--who actually made the decision is not revealed--immediately moved to apply the Reno-approved "rules of engagement," i.e., "appropriate deadly force will be used" and "opted to escalate the gassing operation." The Justice report emphasizes that: "In fact, the FBI did not fire a shot during the entire operation." (JDR:288-289) (Their emphasis.) The FBI obviously does not consider the more than 400 ferret tear gas rounds that grenade launchers shot into the building to be artillery, even though they are "capable of penetrating a hollow core door." The Justice report admits: "Some observers, including FBI employees who were not privy to the operations plan, have questioned whether it was proper for the FBI to escalate the operation once the Davidians opened fire, given that the HRT agents were not threatened by the gunfire while they were inside the CEVs and Bradleys" and then notes the Attorney General's prior approval, danger to tanks' drivers from rounds penetrating tank openings and the fact that the FBI had "exercised remarkable restraint" during 51 days. (JDR:289)

Fire survivor David Thibodeau recalled he was listening to the Ron Engelman radio show in the chapel as the tanks gassed and rammed the building. When Engelman reported that the FBI alleged the Branch Davidians had fired on the tanks, Thibodeau's reaction was: "I knew it was over. I didn't hear any shots from my side of the building. . .I could see they were setting up the American people for a disaster. I was prepared to die at that point." [397][282]

c. FBI Refused to Negotiate

As we have seen, Reno told Congress she instructed the FBI that "if it appeared that, as a result of the initial use of teargas, Koresh was prepared to negotiate in good faith for his ultimate surrender, the FBI was to cease the operation." However, SAC Bob Ricks stated the FBI's opinion on negotiations during the 10:30 a.m. press conference on April 19th: "We're not negotiating. We're saying come out. . .this matter is over." [398][283]

At 6:24 a.m., a half hour after Steve Schneider threw the phone out the window, FBI loudspeakers instructed the Davidians to fly a white flag to signal "their phone was not working and they wanted to reestablish phone contact." They did so, but quickly replaced it with a non-surrender dark blanket. Chief negotiator Sage then gave them two minutes to surrender. They did not. At 9:10 the Davidians hung out a white banner reading, "We want our phones fixed." It is not known if Janet Reno, who was at the Washington FBI Operations Center, saw the banner or inquired about the Branch Davidians' willingness to negotiate. At 9:49 the FBI negotiators announced over loudspeakers that "the phone would be reconnected only if the Davidians clearly indicated they intended to use the phone to make surrender arrangements." However, this would require an agent walking ~~on~~ foot, near the building. "The FBI was unwilling to expose its agents such a risk (sic) absent a clear signal from the Davidians that they would use the reconnected phone to make surrender agents (sic) with the FBI. The Davidians never provided such a signal." Graeme Craddock retrieved the phone but never gave the "signal." (JDR:289-293)

SAC Jeffrey Jamar told reporters that although the signs coming from the compound seemed to indicate that the cult members were willing to talk, "We tried to figure out a way to get a line, but we couldn't figure out a way to do it safely." [399][284] Obviously, it never occurred to the FBI to stop its gas attack and pull back its tanks. What does seem clear is that the FBI interpreted Reno's "ultimate" surrender to mean "immediate" surrender.

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Diagram from Treasury Department Report - Not to Scale Altered to include concrete room, water tower, buried bus, missing room names, tank damage

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Infrared photo page

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Infrared photo page

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d.FBI Did Begin Demolition of Mount Carmel

The FBI did not expect gassing alone to work. One reporter wrote that SAC Bob Ricks "did not expect cult members to begin leaving the complex, despite the power of the tear gas." [400][285] In fact, the FBI described the next step--the plan to demolish Mount Carmel--to the press during an April 19th morning press briefing. Besides the gassing, "A secondary plan, according to authorities, was to knock the compound down building by building. Some of the armored vehicles that

surrounded the Branch Davidian complex had been fitted with battering rams." [401][286]

Just before noon, the FBI began demolition of the building. Edward Dennis calls this "an apparent deviation from the approved plan" because the FBI did not wait 48 hours before it "dismantled" the building. (JDR:Dennis:59) However, speeding up demolition was implicit in Reno's approving the new rules of engagement. Despite Dennis' acknowledgement that the tanks began demolition, Justice Department and FBI officials have been reluctant to admit that the tanks smashing through walls and into the building--what the FBI calls "breaching activities"--was in fact the beginning of demolition. They have given differing explanations for the accelerated tank rammings.

During an April 21st press briefing, unnamed senior Justice Department officials told reporters, "agents began battering the walls of the compound to make bigger holes so long booms or `arms' attached to the vehicles could inject the gas deeper into the building to counteract high winds outside that appeared to be dispersing it." [402][287] And FBI Deputy Director Floyd Clarke told the April 28, 1993, House Judiciary Committee hearing that in the final assault the FBI drove the tank in through the front door, the side of the building and the back of the building, "to give these people ways to exit the building, which some later used." Whether FBI ground commanders Jamar and Rogers unilaterally began demolition of Mount Carmel, or first consulted with officials in the Washington FBI Operations Center, has not be revealed.

Justice Department officials did admit to the press that "the net result was that the actual operation may have appeared more threatening to Koresh and his followers than the more cautious plan approved by Reno. Asked yesterday if agents in Waco had exceeded the plan she approved, Reno said `I don't think so,' according to department spokesman Carl Stern." [403][288] We have not found a specific comment from Attorney General Reno herself on this issue.

[404]13. SUSPICIOUS ACTIVITY BY FBI AGENTS

Indianapolis attorney Linda Thompson created a controversial and widely distributed video tape called "Waco, the Big Lie." It details important BATF and FBI violations of rights, use of excessive force and coverup in the massacre of the Branch Davidians. [405][289] The video tape footage clearly shows suspicious activity by agents (or suspected agents) which the Justice report does not explain and which must be explained by FBI agents and personnel under oath.

a. Agents Jumping in and Out of Tanks

The Justice report frequently mentions that FBI agents were in constant danger of being shot at by Branch Davidians. According to Newsweek, "HRT was under orders not to leave its tanks or enter the compound on foot. . .HRT agents did have authority to leave their tanks but only in the rarest circumstances, such as children being killed or held hostage." [406][290] During the April 19th, 10:30 a.m. press conference SAC Bob Ricks stated, "We are not exposing any of our agents individually to firearms." [407][291] The Justice report never mentions such directives, only that during the fire agents left their tanks to arrest Branch Davidians who were exiting the burning building and to look for survivors in the buried bus.

However, in one portion of the "Waco, the Big Lie" agents clearly can be seen jumping in and out of the swung-open back of a tank, near the

buried bus and a large hole in the building, during the gassing and before the fire. The Fire Report states that the M79 grenade launchers were "hand held." (JDR:Fire Report:8) Therefore, to use them agents would have to open the hatches of, or even leave, their tanks to fire the grenades. Neither the FBI nor the Justice report admits that agents left their tanks until after the fire was well underway.

Later video footage shows what looks like a dark-clothed individual riding on top of a tank which is pulling away from right side of the building as wisps of smoke are seen coming from second floor. (However, some think it may not be a person but either debris or the tank's boom.) If it is a person, his activities, and those of all the agents outside their tanks, must be investigated.

The agents being outside their tanks, plus news reports that survivors last saw David Koresh at 10:00 a.m. and Steve Schneider at 10:30 a.m. [408][292] and autopsy reports that both died of gunshot wounds, have fueled speculation that agents may have killed Branch Davidians inside the building. The Reno-approved rules of engagement--fire only if fired upon--still would have given FBI agents wide leeway to fire at Branch Davidians, since allegedly they were firing out of Mount Carmel. This would be especially true if any agents decided to apply the rules of engagement Richard Rogers approved in the Weaver case--fire if you see anyone with a gun. The hostility expressed by Jamar, Ricks, Rogers and Sage may have communicated the message that FBI agents were permitted to use "any means necessary" to end the siege.

Pathologist Cyril H. Wecht, who conducted an independent autopsy on the body of David Koresh, said because the bullet wound was in the middle of the forehead, he did not "`rule out' the possibility that Koresh and Schneider were shot by outside snipers." [409][293] Dick DeGuerin admitted, "I have heard a rumor that six or eight specially trained (men) were sent in to shoot people. . .when you look at some of the wounds, they were not suicide wounds. Not typical suicide wounds." [410][294] Darren Borst, son of Mary Jean Borst who died from gunshot wounds in the back, insisted that an "FBI hit team" killed his mother and other Branch Davidians found with gunshot wounds. [411][295] Some even speculate one or more Branch Davidian fire survivors will testify they saw government agents shooting Branch Davidians--accusations they will have withheld for their own safety's sake until the trial.

b. Questions About Individual Who Jumps Off Roof

There are also questions about the individual seen jumping off the front roof, and, untouched by fire, walking away almost nonchalantly. He takes off a hood and then the walks at least 150 feet away from the burning building with his hands at his side, seemingly carrying a long stick or a rifle. These actions are contrary to the FBI's repeated instructions to individuals to put up their hands and not carry anything.

Only one Branch Davidian male, Renos Avraam, jumped off the roof. The Justice report states, "Avraam then jumped off the roof, and walked toward one of the Bradleys with his hands up." (JDR:298) Newsweek reports, "One cult member, Renos Avraam, appeared on top of the burning roof. He fell to the ground, and FBI agents rescued him." [412][296] Time reports, "A man appeared on the roof, clothes aflame, rolling in pain; he fell off the roof, and the agents ran over, tore off his burning clothes and got him safely inside the armored vehicle." [413][297] And during the April 28, 1993, House Judiciary Committee hearing, FBI Deputy Director Floyd Clarke said HRT members had seen a man "consumed by fire" fall off the roof and ran over to

help him into a vehicle. Considering that these accounts do not describe the individual seen on "Waco, the Big Lie," further investigation of who this individual was must be done.

[414]14. LACK OF FIRE PRECAUTIONS

According to the Justice report, "In one of the meetings held in Waco in early April. . . (Assistant U.S. Attorney) LeRoy Jahn raised the possibility of fire at the compound and suggested to the FBI that fire fighting equipment be placed on standby at the scene. . . (Deputy Assistant Director Danny) Coulson explained . . .due to the range of the Branch Davidians' weapons, fire fighting equipment could not be brought into the proximity of the compound. Coulson further explained that structural fires cannot be fought from the outside. The only way a fire could have been fought at the compound would have required fire fighting personnel to enter the compound. That option would have posed an unacceptable risk to the fire fighters." (JDR:302-303) (Again, one wonders why the FBI was concerned about fire fighters and not about the agents seen jumping in and out of tanks on "Waco, the Big Lie.")

Janet Reno admits she gave little thought to the possibility of fire. Her worse case scenario "would be an explosion, not a fire. . .She recalls lying awake at night asking herself. `Oh my God, what if he blows the place up?'" (JDR:274) Reno did assert at the April 28, 1993, House Judiciary Committee hearing: "I was concerned about intentional or accidental explosions and ordered that additional resources be provided to ensure that there was an adequate emergency response." During her April 19th press conference, "Ms. Reno said she thought that the fire department had been" given advance notice. However, the Waco fire department said it had not been given advance notice of the assault by Federal agents. [415][298] Reports that the FBI had called Parkland Memorial Hospital in Dallas about its burn unit were confirmed in November, 1993, when Parkland announced it was planning to sue the federal government for refusal to pay $370,000 in medical bills of three Branch Davidians in the hospital's burn unit. According to the Dallas Morning News, Tom Cox, Parkland's legal director "said he thinks the government should be held responsible because federal authorities called the hospital the day of the assault on the cult compound, asking about the burn unit and available bed space. He said a call was made to the hospital about 6 a.m. that day, but it was unclear if it was during that call or a later call that day that the burn unit was mentioned. The FBI began its tear- gas attack about 6 a.m.; the fire did not begin until shortly after noon. . . (and) . . .the Davidians `certainly' were in federal authorities' custody when they were taken to Parkland." [416][299]

Fire trucks were not summoned until 10 minutes after the fire broke out. The FBI then held them up for 16 minutes after they arrived. "Although the fire crews did not approach the burning building until 31 minutes after the fire had first been reported, it would not have been safe for them to do so earlier given the reports of gunfire from inside the compound." (JDR:303) Of course, Houston Chronicle photos and video tapes show that 31 minutes after fire was first reported, the building is entirely gone! SAC Ricks "conceded, officials in charge of the operation had not expected a fire." [417][300] After the fire, Representative James Traficant commented on the FBI plan. "When you have 100 TV crews but not one fire truck, that's not a well-thought out plan, that's box office." [418][301]

[419]15. BRANCH DAVIDIAN STATEMENTS THAT DEMOLITION TRAPPED PEOPLE

The streams of gas from the Mark-V delivery system, the rampaging ferret tear gas rounds and the ramming tanks drove Branch Davidians into the interior of the building where they were trapped when the fire started.

a. Effects of the Gas

The gassing had relatively little effect on the Branch Davidians because they wore gas masks and because stiff winds rushing through the large holes created by tanks quickly dispersed the gas. Some children's masks were made to fit with the help of wet towels; other children were placed in the concrete room with wet blankets ~~over~~ their heads to protect them from the gas. "During the hours before the fire, when the building was under assault, (attorney Jack) Zimmerman said, cult members donned gas masks and went about their normal routines while Koresh checked to see if everyone was all right. . .It bothered them, but it didn't cause pandemonium," he said of the tear gas. "People remained calm." [420][302] Zimmerman also said: "They thought they were going to spray some tear gas and retreat," and added that the survivors thought Koresh would be allowed to finish his book about the Seven Seals, after which they'd go to court. [421][303] What was terrifying was the dangerous ferret tear gas rounds smashing through the building which drove most Branch Davidians into the concrete room or to the second floor hallways. And those who were most severely affected by the gas may have been too debilitated to leave the building once the fire began.

b. Effects of the Tanks

At the April 19th 10:30 a.m. press conference SAC Ricks told reporters, "The pounding of the compound that you see is really a necessary function of the insertion of the gas. . .So, it's not necessarily, at this point, one of destruction to the compound." When reporters asked if they warned those inside each time a tank was about to smash into the building, Ricks answered, "We are not advising them ahead of time. We are continuing to advise them to please exit the compound." (Remember it was Ricks who also told the Dallas Morning News, "we felt that if we got any of them out safely, that would be a great bonus.")

According to the Justice report, "Members of the HRT were assigned to be tank drivers, tank commanders, Bradley vehicle crew, snipers, and sniper's support. . .An orbiting helicopter with SWAT personnel aboard would apprehend and arrest subjects attempting to flee from the crisis site." (JDR:279) Well before April 19th FBI agents had been criticized for their sloppy tank driving techniques, especially after a Bradley Personnel Carrier driver trying to move a Waco Tribune-Herald vehicle stranded on the property, ran over and crushed it. [422][304] Doubtless, the tanks were driven with similar carelessness as they rammed their way into the building.

Tanks rammed the front staircase, pushed in the bullet-riddled front door, collapsed the walls and then the roof of the gymnasium as they pushed their way back towards the back of the building where they bashed in the dining room walls and the back doors. And then, around noon, the tanks began the final, fatal round of tank attacks. FBI Deputy Director Floyd Clarke told the April 28, 1993, House Judiciary Committee hearing admitted to simultaneous tank attacks when he said: "at this time we made some openings in the building where we actually drove the tank in here through this door, through this side of the building and through the back side here to give these people ways to exit the building--which some later used." That the FBI believed it needed to punch out new "ways to exit" indicates they knew they

already had blocked the existing exits.

News reports provide more details of the damage caused by the tanks. "By noon, whole sections of the exterior walls had been demolished. Portions of the roof were collapsing. Cult members inside had been forced into an ever-narrowing circle of interior rooms." [423][305] According to Associated Press, "Then the FBI sent in its biggest weapon--a massive armored vehicle larger than the others [424][306] and headed for a chamber lined with cinder blocks where authorities hoped to find Mr. Koresh and Mr. Schneider and fire the chemical irritant directly at them. When the tank rumbled in, it produced such trembling it felt like an earthquake. The tank took out everything in its path. The front door went. So did an upright piano standing as a barricade behind it." [425][307] "(E)very assault by a tank rattled the poorly constructed buildings, and cult members dodged falling sheet rock and doors." [426][308]

Attorney Jack Zimmerman said, "People were trapped: the building was falling down, the damn tanks had just destroyed the structure and nobody knew where they were because the ceiling had fallen in." [427][309] He also said the big tank's "concussion tipped everything over on the second floor, collapsed the walls and stairwells, trapping women and children upstairs." [428][310] Dick DeGuerin told the television show "Prime Time" that those who sought shelter in the second floor hallways were trapped because doors were twisted and jammed by the tanks ramming the building and they could not get into rooms that had windows from which they could escape.

Fire survivor Jaime Castillo "tried to move around the building, but the repeated pounding on the exterior had left piles of rubble everywhere. The central stairway between the first and second floors was littered with plasterboard and wood and had partially collapsed." [429][311] Ruth Riddle explained why people didn't get out when the fire started: "I believe that they couldn't get out. Where the buildings were rammed is where the staircases were." [430][312] David Thibodeau told "Good Morning America," "I could see people being trapped, 'cause when the tanks did go in there, there were hallways, there were places that were cut off." [431][313] Survivors recall that after the fire started, even those who had been in the outside rooms "fled them for interior areas, but within a few minutes these were ablaze, too." [432][314] David Koresh's mother Bonnie Haldeman told a television interviewer that a survivor told her that "all the back exits had been blocked. The whole back building had been pushed in. The back doors had been pushed in. There was no way for anyone to get out the back." [433][315]

After the fire SAC Jeffrey Jamar said: "Mr. Koresh obviously intended for the children to die or he would have put them in a safe place--such as the buried bus beneath the compound. . .'When our (hostage rescue team) was able to get down into the bus, hoping we could find the children. . .in that bus, the air was cool--and no gas. Had Koresh wished those children to survive, that was one place they could have been put safely when he had the fire started." [434][316] President Clinton also mentioned this "fact" during his April 20 press conference. However, as we know-- and Jamar should have--during the morning tanks had been running back and forth over the tunnel and part of the house had been pulled down on top of it. The Fire Report also admits that "a significant amount of structural debris was found in this area indicating that the breaching operations could have caused this route to be blocked." (JDR:Fire Report:10)

c. Position of Bodies and Autopsy Reports

The Justice report confirms that most of the 80 or more people who

died were found in the furthest interior areas: inside the concrete room (32), in front of it (3), in the nearby kitchen (16), in hallways (6), in the communications room (3). During the April 28, 1993, House Judiciary Committee hearings, Representative James Sensenbrenner, who himself had barely escaped a disastrous house fire, questioned why so many bodies were found near the middle front of the building, which caught fire later than the back and the side. Assistant Director for the Criminal Investigative Division Larry Potts answered that the FBI had "statements from people in there who chose to come out" that others had "chosen not to come out." However, no such statements were included in the Justice report.

The Justice autopsy report notes that one unidentified 30-50 year old female "died of multiple fractures of the cervical spine, caused by blunt force trauma probably associated with a fall. Her body was found in front of the bunker." (JDR:322) It is possible the woman was either crushed by a tank or that the tank brought down part of the second floor, killing her. There may be no survivors from this area of the building to testify as to what happened to the woman.

Despite all this evidence, the Justice report refuses to admit the possibility that the gassing attack-- including more than 400 ferret rounds--and tanks ramming the building trapped the Branch Davidians. "While the fire was burning the negotiators repeatedly broadcast repeated messages to the compound, pleading with the residents to leave. Only a few of the Davidians heeded those pleas." (JDR:300)

[435]16. BRANCH DAVIDIAN STATEMENTS DEMOLITION STARTED THE FIRE

Below we detail the statements of fire survivors that FBI tank activity caused the fire that consumed Mount Carmel and killed 80 or more people. Later sections will present FBI and fire investigators' conclusions that the fires were started by Branch Davidians.

a. Building Filled with Flammable Fuel

After the FBI cut off the building's electricity, the Branch Davidians became totally dependent on flammable fuel for light and heating. Attorney Jack Zimmerman noted that "almost every room had a coleman lantern." [436][317] These lamps use kerosene as fuel. Renos Avraam's attorney Dick Kettler said of that morning, "As they awoke, kerosene lamps hanging on the outside walls were lit." According to the same news account, "Some of the upper rooms also contained butane gas heaters, and propane gas tanks were located throughout the compound." [437][318]

b. Ferret Rounds and Tanks Dispersed Fuel

A Branch Davidian survivor told Dr. James Tabor that rocketing ferret rounds knocked over the kerosene lamps, spilling so much kerosene and making the floor so slippery, they sometimes had to go down on "all fours" to get around (private communication). The Fire Report does admit that due to "structural damage. . .it is possible that some flammables were spilled inside the building as a result. These flammables could have contributed to the destruction of the building as the fire spread to them. There is no positive proof of this but it cannot be eliminated." (JDR:Fire Report:9)

c. Allegations Final Tank Assaults and Demolition Started Fire

As our chronology illustrates, there were major tank assaults in the areas where the fires started just minutes before fires were first

seen by outsiders. The assaults on the back of the compound--at the dining room and concrete room--and the collapse of half of the huge gymnasium were never shown in television news reports and no newspapers included them in their diagrams. Television footage and newspaper photographs did show clearly the fire which began on the second floor, the fire in the back of the building, once it reached the second story of the tower, and the fact that the middle and left front of the building caught fire later than either of those sections. The Justice report does not include a very clear description--or any graphics--of these last tank assaults before the fire, leaving anyone who has not studied the full aerial infrared video tape of the tank attack somewhat confused.

The two "official" descriptions of the tank attacks below seem to describe tank attacks at the rear of the building that collapsed the gymnasium. Evidently the tanks were blocked by fuel tanks from reaching the back of the building from the left side of the building, so they tried to squeeze through the narrow space between the swimming pool and the gymnasium walls. In so doing, they brought down those walls, and half the gymnasium roof. Justice Department report reviewer Edward Dennis writes that the "CEV2 was ordered to clear a path through the compound in order to clear a path to the main tower so that CEV-1 could insert tear gas in that area. In that endeavor the CEV started to knock down a corner of the building and a portion of the roof collapsed. Very shortly after this happened, fire was observed in several locations in the compound." (JDR:Dennis:59) (The "tower" was the three stories built on top of the concrete room.) During the Justice Department press conference October 8, 1993, Assistant to the Attorney General Richard Scruggs, who compiled the factual report, explained: "Four to five minutes before the fire broke out the vehicle went through the tower area and breached a hole in there and saw what he believed to be a group of people inside, he believed women and children." [438][319] (Because we do not have a video tape of the press conference, we assume that Scruggs was pointing to photographs of the back of the building; however, he may have been pointing to entry of the tank through the front door.)

The Associated Press account in a section above describes the entry through the front door. "Then the FBI sent in its biggest weapon--a massive armored vehicle larger than the others and headed for a chamber lined with cinder blocks." i.e., the concrete room. " (Survivors) said the tank took out a barrel of propane, flattening the container and spilling its contents. And as the tank thundered through the house it tipped over lit camping lanterns, spitting flames that ignited the propane and other flammables. . .The building erupted. It happened too fast to pull fire extinguishers from the walls." [439][320] Although Branch Davidian survivors claim it was this tank entry which started the fire, the Justice report does not mention its entry in its section on the final tank attacks. (JDR:294) The report does include the 11:59:16 infrared photo of the tank at the front door.

"Jack Zimmermann, who said he spoke Wednesday with four survivors and attorneys for two others, said all six survivors say an armored vehicle that smashed through a wall hit the propane tank and started the fire. `One person heard someone screaming from the area where the tank was, `A tank has come in! There's a fire started!' They said the smoke was so black, that one of them said within seconds he couldn't see where he was.'" [440][321] According to the New York Times, "The survivors said that the fire began after an especially violent tank collision plowed far into the building. The (tank) crushed a container of propane, according to the account that lawyers gave the news agency. It also tipped over lighted camping lanterns, which spit flames that ignited the propane and other flammables. . .escape

attempts were hampered because gas masks clouded up in the smoke and heat." [441][322]

It is possible that the tank which rammed the second story at about 12:06 p.m. also started a fire--the "flicker of orange" one reporter described shortly after the ramming. Attorney Dick Kettler reported his client Renos Avraam "was with a number of people squeezed into a hallway on the second floor when the fire started. He heard a tank crashing against the wall in a room near them. Then that room caught fire. He said it was terrifying. The tanks were crashing into the walls, and the whole building was shaking. He thought he would get crushed between the walls. Others in the hallway didn't have time to escape. The fire went too fast. It was total blackness and confusion. In seconds, everybody was disoriented." The story notes that Avraam was apparently the only survivor from that hallway, having found a window to crash through that led to the front roof. [442][323]

Even with this sketchy evidence, we can see that the tank that rammed through the back wall near the dining room clearly could have started the fire seen minutes later which quickly consumed and collapsed the tower above the concrete room. And the big tank that rammed through the front door towards the tower could have started both the second story fire and fires deeper inside the chapel, including near the dining room. Alternately, the tank ramming the second floor may have started that fire. Either the second story fire or any other internal fire could have spread rapidly through the puddles of spilled lantern fuel into the chapel area to the back of the stage where infrared photos show flames raging a few minutes later.

The collapse of half the huge gymnasium's roof also could have started a fire in that back area. A California gun rights organization obtained CBS footage of the April 19th attack and found that news footage clearly shows the gymnasium collapsing sometime between 11:55 and 11:59 a.m. The group claims that a heat plume indicating fire in the gymnasium area can be seen in the 11:59:16 infrared photo included in the Justice report. [443][324]

d. Questions about "Flaming" Tank

The most controversial part of the video tape "Waco, the Big Lie" is a scene of a tank pulling out of the middle front of the building (not the front door) which appears to be shooting flames from the end of a boom. Thompson claims this is "proof" that the government intentionally started the fire. A number of FBI critics, including some Branch Davidians, doubt the tank is shooting flame, based on other footage of the same scene which makes the alleged "flames" look like a reflection from building debris or from escaping gasses. Others claim that no such light can be seen on high resolution tape of the same footage.

Because Thompson had distributed her video to television stations and politicians all over the country, the Justice report answers Thompson's allegations in a section entitled "False Accusations that the FBI Started the Fire." (JDR:304-307) Note that the Justice Department did not bother to address survivors' more credible accounts of how FBI tanks "started the fire." Right after the fire, Justice Department spokesperson Carl Stern's dismissed the six survivors' statements saying, "That stuff is preposterous." [444][325]

The report asserts that the time when that shot was filmed is "unclear." (JDR:305) However, earlier the report mentioned the existence of "split-screen video prepared by the FBI laboratory, containing the infrared footage from the air on one side, with the televised footage from the ground on the other." (JDR:296) Analysts

should have been able to ascertain the time through the videos' "time meters." The report also asserts that infrared photos show no indication of heat coming from the front of the tank (they do show heat from the exhaust at the back of the tank). Evidently, Justice report experts did not watch the whole tape for signs of heat coming from the front of all the tanks.

The Justice report asserts that the army "has examined all the CEVs used on April 19th to see if they had been outfitted with a flame-emitting device or if there was any evidence of charring or fire. "No such evidence was found." Of course, this investigation probably was not launched until mid or late summer, when "Waco, the Big Lie" began to have political impact. By that time, the tanks, some of which had pushed burning debris into the fire, would probably have been cleaned, refitted and repaired. The report does not mention if maintenance or repair records were checked.

A reporter asked about the "flaming tank" at the Justice Department's October 8, 1993 press conference. Richard Scruggs provided more information from "preliminary assessments" by University of Maryland "experts." Scruggs speculated that a flame could have come from a "busted hydraulic line or something like that" but said that the Justice Department had inspected the CEV's and found no evidence of broken parts. During his statement Scruggs asserted that "carbon monoxide"--a poisonous and sometimes flammable gas--was used to propel the CS gas into the compound. [445][326] Because the Justice report states the dispersant was carbon dioxide (JDR:287), this prompted speculation that the Scruggs had accidently "let the cat out of the bag." However, Scruggs later told Washington Times reporter Jerry Seper that he had in fact made an error (private communication). (The fact that the Fire Report labels "CS" gas "CN" gas (JDR:Fire Report: 8) has also prompted speculation.) Further, investigation is in order as to whether any tanks were somehow spewing flames or casting off sparks that caused one or more of the fires that consumed Mount Carmel Center.

e. Evidence Fire Drove Some to Suicide

Because gun shots were heard during the fire and twenty-one Branch Davidians died from gun shot wounds, various FBI and Justice Department officials, and the mass media, have alleged the fire and shootings were either "mass suicide" or "mass murder" as a few Branch Davidians set the fires and shot those who tried to escape. SAC Jeffrey Jamar said, "maybe some were forced to stay" because gunshots were heard as fire started and one body bore a bullet hole in the head. [446][327]

However, given the fact that most exit routes were blocked by debris from the tanks when the fire roared through the building, survivors and others believe that some of those trapped in the fire chose suicide over asphyxiation or burning to death. Fire experts who viewed video tape of the fire opined, "it was a text-book example of a deadly fire involving a unsafe building and a 30-mile-an-hour wind. Cult members may have had less than five minutes to escape after the fire began. . .Once one room had become engulfed by fire, a point referred to as flashover. . .the fire produces an enormous amount of toxic gases that cause confusion." [447][328]

When asked about the fact that bodies had been found with gunshot wounds to the head, Branch Davidians denied there was a suicide pact. David Thibodeau said, "No, there was not a suicide pact. . .I know that if I were trapped in a fire and there was a fire next to me, and I was. . .it was very probable that I was going to burn, that I may, I may just taken the easy way out." When the interviewer asked why

people didn't try to get out, Thibodeau answered, "I believe some people did try to get out or else I wouldn't be sitting here. . .obviously." [448][329]

Fire survivor Ruth Riddle said, "Given the fact that they may have been trapped, they may have opted for that rather than burning to death, that's a terrible way to die." [449][330] Jaimie Castillo told a reporter, "If I was in that situation, where I couldn't get out and the fire was coming my way, I'd probably take myself out." [450][331] Derek Lovelock said Koresh "didn't want to commit suicide and he didn't want to be killed. . .We knew the end was coming, but we honestly thought it would all pass peacefully, David included." [451][332] Louis Alaniz, the "visitor" who left Mount Carmel a few days before the fire, also agreed that there was no suicide pact. [452][333]

Pathologist Dr. Rodney Crowe told the Maury Povich audience, "I think they did what you would have done, what I would have done and I've put myself in that position. If I was on fire, if my child was on fire, if the heat was so unbearable, I'd shoot my child. I would hope I'd have the strength to shoot myself. As we were examining these people we hoped that we would find gunshot wounds because we knew that they went out quickly that way rather than suffer the horrible death that we knew some of them did."

Dr. Crowe was also incensed by some newspaper interpretations of the autopsy findings. "In our local Fort Worth paper on the front page it said `Cultist Children Executed'. . .and mentioned that children were shot, stabbed, beaten to death. . . (The paper wrote) `It is apparent that the parents turned on their children in favor of David Koresh's teachings.' This is why I'm here because our product has been twisted. . .Nowhere did we say execution. Nowhere did we say beaten to death. It was blunt force trauma. Three children had blunt force trauma. But it was from the falling concrete in the bunker that fell on them. There's an opening in the top of the bunker eight feet approximately in diameter and large chunks of concrete fell on these people. And to say these children were beaten to death is unconscionable."

The Justice report alleges (JDR:7), and some papers repeated, that one child had been stabbed to death. Dr. Crowe later told an audience member that the child who reportedly had been stabbed may also have been hit by falling concrete or other materials; the mark on a rib which suggested stabbing might also have been an old wound from a childhood accident (private communication.)

## [453]17. FBI ALLEGATIONS BRANCH DAVIDIANS STARTED THE FIRE

As soon as the fire started, SAC Ricks, who earlier in the day had assured reporters the FBI was confidant there would be no mass suicide, proclaimed, "Oh, my god, they're killing themselves!" as if that was the only possible cause of the fire. Below is evidence the government presents that the Branch Davidians started the fire, plus comments on that evidence. Discussion of the Fire Report follows in a later section.

### a. Testimony by Agents

The Justice report states, "At 12:10 p.m. another HRT agent, who was 300 yards away from the compound at Sierra One post, actually saw a Branch Davidian start the fire. The agent later reported to investigators what he had seen: `. . .he noticed the man was moving back and forth behind the piano and the individual then assumed a

kneeling position. (The HRT agent) noticed the man's hands moving and immediately after that (he) noticed that a fire started in that position. The man immediately departed the area of the piano. At the same time (the HRT agent) noticed a fire start on the red or right side of the building." (JDR:296) However, as the Justice report's own 12:09:50 p.m. infrared photos show, by the time the agent made that report the whole front and right of the building were fully aflame.

The report goes on to say, "The HRT agent reported what he had seen over the radio. Two HRT snipers simultaneously noticed fire breaking out in two different parts of the building -- at the front-right corner, and at the third or fourth floor of the tower on the back-left side." (TDR:297) However, at that time they would have seen well-developed fires. The report adds, "Another HRT sniper thought it odd that, from his vantage point, the fire appeared to spread in the opposite direction of the wind, which was blowing from the right side to the left side of the complex." (TDR:297) The implication seems to be that the fires were deliberately started, since they go against the direction of the wind. However, fires started by tanks also could go against the direction of the wind.

The Justice report does not mention SAC Jeffrey Jamar's April 20th allegation to reporters that, "At least 3 people observed a (cult member) spreading something. . .with a cupped hand and then there was a flash of fire." [454][334] (Two other reporters also mentioned Jamar's claim: one described it as "three FBI sharpshooters had seen a fireball shortly after they had watched cult members sprinkling liquid inside." [455][335] The other described it as "three snipers, peering through binoculars from a station 100 yards away from the compound, could see a cult member start the blaze." [456][336] ) Nor does the Justice report mention Bob Rick's account of an agent's version reported in the Washington Post: "someone appeared on the second floor of the compound wearing a gas mask and made a throwing motion. Flames erupted, and the person signaled to agents he did not want to be rescued." [457][337] There is no evidence either version was "redacted" in the Justice report. SAC Jamar and these agents must be interviewed under oath so that we may discover if any agents fabricated stories about seeing Branch Davidians start the fire.

b. Surveillance Recordings

During his opening statement in the Branch Davidian trial, lead prosecutor LeRoy Jahn alleged that surveillance devices had picked up voices saying, "spread the fuel," and "light the fire." [458][338] Jahn told jurors that they would hear an audio tape in which one individual asks, "What's the plan?" A second individual laughs and answers: "Haven't you always wanted to be a charcoal briquette?" [459][339]

However, the prosecutor will have to prove that the individuals speaking are Branch Davidians (since we know FBI agents were outside their tanks); that they are referring to spreading fuel to start a fire--not moving fuel out of the way of tanks to prevent one; that the individual says "light the fire" and not something indistinguishable--or something closer to "a tank's light a fire". In relation to the "charcoal briquette" joke, the prosecution will have to prove that this is a statement of intention to light a fire--not a joking response about what will inevitably happen if they don't leave the building--a firetrap surrounded by rampaging tanks! One reporter writes that the FBI has admitted that the listening devices "had yielded only fragmentary and inconclusive information about Mr. Koresh and the conditions inside the complex." [460][340] This may well be true of these surveillance tapes as well.

c. Alleged Testimony By Fire Survivors

FBI agents interviewed surviving Branch Davidians as they escaped the burning buildings. "During those interviews three of the survivors made statements about the cause of the fire. Renos Avraam told the agents that he had heard someone inside the compound say, `The fire has been lit, the fire has been lit.' Clive Doyle told the Texas Rangers that the fire was started inside the compound with coleman fuel. Doyle said the fuel had been distributed throughout the compound in specific, designated locations." (JDR:300) However, on April 20th Renos Avraam called to the press as he was led into court, "The fire was not started by us. There were no plans for mass suicide." [461][341]

The report describes at length only Graeme Craddock's alleged comments to the FBI: "Craddock advised that when the Bradley came in through the front entrance, they started moving fuel. Craddock believes that the compound had a total of approximately one dozen, one gallon containers of lantern fuel and that they had been located in the lobby area. He said he saw a lot of people grabbing fuel containers and moving them to other areas. Craddock believes that possibly three or four of these containers had been put next to the window that had already been knocked out by the Bradley on the southern side of the chapel area. Craddock said he had heard someone talking about shifting the fuel from the hallway near the chapel . . .He said he had heard someone complain about fuel being spilled inside. . .Craddock indicated that he had heard shouts about starting the fire. . .Craddock also said that he had heard someone say, `Light the fire,' and that he had also heard someone else say, `Don't light the fire.'"

Craddock allegedly told the Texas Rangers: "He said he went into the chapel area with several other people. He heard the word passed to `start the fires.' He said that someone said `make sure.' He said that word was then passed to not start the fires . . .Craddock said that if there was a suicide pact, he knew nothing about it. He said that he knew nothing about a plan to burn the building until he heard someone pass the word to start the fire." (JDR:300-301) However, Craddock has told the press, "No one inside set any fires. The tanks knocked over the gas lanterns. . .There was no suicide pact." [462][342]

[463]18. FBI AND BATF CRIME SCENE COVERUP

The FBI's disinformation campaign--and their disregard for preserving the "crime scene"--only increased after the April 19th fire.

a. FBI Disinformation After the April 19th Fire

SAC Jeffrey Jamar's claim that some Branch Davidians may have shot others trying to escape is just one example of the kind of disinformation the FBI, and especially SAC Bob Ricks, disseminated after the fire. Other examples are:

* On April 19th, Ricks told the press: Koresh "wanted to have as many people killed as possible. That's why it was called Ranch Apocalypse." [464][343] ; and "David Koresh, we believe, gave the order to commit suicide and they all followed his order." [465][344] and Koresh "was demanding provocation to get in a fight with us. . .We believe they were preparing for another armed standoff." [466][345]

* On April 19th, "Mr. Ricks said it was only speculation at this point, but that authorities had received reports, apparently from some of the survivors, that the children had been injected with some kind

of poison to ease their pain." [467][346] However, the Justice report made no such claim.

* During the April 28, 1993, House Judiciary Committee hearings, Ricks told lawmakers that when a released child heard his father and Koresh were dead he said, "I don't care. No more beatings." and the children had asked if their new home had a "beating room." The social workers have not revealed publiclly that any child making such a statement. During the hearing Texas Representative John Bryant said that he was bothered that the FBI seemed to make a lot of statements whose purpose was to create public opinion supportive of the FBI.

* In August of 1993, in a speech before a Tulsa, Oklahoma civic group, Bob Ricks speculated that David Koresh ordered the cult compound burned down to kill followers and federal agents, but screamed, "Don't light it up!" when he realized agents were retreating. However, the order to hold back came too late. "What we think was in his mind was that he expected us to come in and mount a frontal tactical assault against the compound. Once we were inside, he would light it up and burn us up with his own people." Ricks added, "I never wish ill will on anybody, but he's one guy I'm glad who was in there." [468][347] A later news report quoted Ricks' speculation that Steve Schneider had shot Koresh out of anger. "In the end, he probably realized he was dealing with a fraud. After (Koresh) had caused so much harm and destruction, (Koresh) probably now wanted to come out, and Mr. Schneider could not tolerate that situation." Officials familiar with the evidence questioned Ricks' comments and FBI officials refused to comment." [469][348]

b. April 19th Destruction of Evidence and the Crime Scene

News videotapes like those in "Waco, the Big Lie" clearly show tanks equipped with plows pushing burning walls into the flaming rubble. These walls might have contained evidence that BATF agents had shot indiscriminately and illegally through them. The FBI may assert this was done to prevent injuries from detonating ammunition and explosives. However, news video tape shows agents walking close to the building as it burns and walking through the rubble the evening of the fire with little concern for their safety. At the end of "Waco, the Big Lie," Branch Davidian Brad Branch cries out over a phone from jail, "They're destroying the crime scene, this is the biggest lie ever put before the American people."

c. FBI and BATF Assisted Texas Rangers In Search for Evidence

As we have seen, the Texas Rangers took "official" control of the scene after Mount Carmel burned to the ground. "Immediately following the April 19th fire the Texas Rangers, working with the FBI, arranged to take command of the remains of the compound. . .The Texas Rangers assumed primary responsibility for combing through the crime scene and recovering evidence. The FBI provided substantial assistance to the Rangers in performing this task." (JDR:308) The Justice report notes that during the search, "The Rangers divided the physical area of the compound into sectors, rows and grids, then formed teams comprised of Rangers, FBI and other technicians, and other law enforcement agents." (JDR:309) The Justice report does not mention the presence of BATF agents, as does the Treasury report which states, "after the Compound was ravaged by fire, ATF firearms and explosives experts collected evidence of the firearms and other destructive devices."(TDR:128)

Defense attorney Dan Cogdell commented that it was mere "window dressing" to have the Texas Rangers put in charge of the criminal investigation. "The Texas Rangers are very respected around here, but it's stretching it to say they are bringing any kind of true

independent judgement. They are in charge, but Federal agents are dissecting the crime scene and cross-checking all the evidence." Also some legal experts called for greater separation between the Texas Rangers, FBI and BATF, including "a completely independent panel. . .to do the criminal investigation. `When the Challenger exploded, we didn't have NASA investigate the accident.' said Bruce Fein, a Washington lawyer who was an associate deputy Attorney General in the Reagan Administration and wrote guidelines of the Federal Bureau of Investigation on procedures for conducting investigations." [470][349]

Whatever little separation there was between state and federal officials quickly ended. The New York Times reported: "State officials overseeing the investigation announced, in an apparent shift in policy, that once the voluminous amount of evidence from the compound is all collected, it would be shipped to Federal laboratories. `Our crime laboratory in Austin has to be available to handle criminal matters that come up in Texas,' said Mike Cox, a spokesman with the Texas Department of Public Safety. Earlier, officials conducting the investigation into how the fire started said that they were using private laboratories in an effort to avoid any appearance of conflict of interest that might arise from a Federal laboratory making conclusions about evidence in a case in which Federal agents' actions were being questioned." Cox told reporters, "The Texas Rangers are investigating the crime scene and if you are concerned about a conflict of interest, you should talk to the U.S. Attorney's office." However, the reporter writes that when he tried to do so: "The U.S. Attorney referred inquiries to the Department of Justice, and Carl Stern, a department spokesman, said, `All the shifts in police (sic) I know of, are the ones you invented,' referring to the news media." [471][350]

d. May 12th Destruction of the Crime Scene

Two weeks after the release of the "independent" fire investigators' report, but before Branch Davidian attorneys could send in their own fire investigators, bulldozers rolled across the burned rubble of Mount Carmel Center, filling in all the holes with dirt and burned rubble. SAC Jeffrey Jamar defended this action. "They're just filling holes so people won't fall in the pits. That's just part of taking care of the scene." And Mike Cox, spokesman for the Texas Department of Public Safety, said bulldozing was necessary so the Texas Health and Water departments could begin work at the site. However, attorney Jack Zimmerman said, "I guess what it does, it forever prevents any checking on the ATF's rendition that the fire was intentionally set." [472][351] Defense Attorney Jeffrey Kearney told local reporters: "Government agents can say what they want now and there's little physical evidence to dispute it." [473][352]

e. Possibility FBI will Tamper with Audio/Video Evidence

There exists a full record of what happened during the siege and on April 19th--news footage, aerial infrared and other video tapes, and surveillance audio tapes. However, as we have said, because modern audio and video techniques allow tampering which can go virtually undetected, any such taped evidence the prosecution uses against Branch Davidians will remain suspect.

[474]19. "INDEPENDENT" FIRE INVESTIGATOR COVERUP

The head of the so-called "independent" fire investigation team was Paul C. Gray, Assistant Chief of the Houston Fire Department. However,

Gray had very close ties to BATF. BATF officials recommended him. He had served as a member of the BATF's National Arson Response Team and taught classes for BATF agents. And his wife was a secretary in BATF's Houston office." [475][353] Attorney Jack Zimmerman revealed, ">From 1982 to 1990, (Gray's) office was on Imperial Valley Drive, in the ATF office. . .He carried a card that identified himself as a special agent of ATF. He handed that card out to people when he interviewed witnesses." [476][354] Finally, Gray had socialized with BATF agent Steve Willis, who was killed February 28th, and attended his funeral. [477][355]

Zimmerman criticized Gray's selection and his conclusions that Branch Davidians set the fires. "Until I see the evidence from an independent, impartial expert, I choose to believe the firsthand account of eyewitnesses who were in the center who said there was no fire started by the Branch Davidians." [478][356]

The Fire Report does not mention if investigators interviewed any of the fire survivors, something which would be done routinely in other fires. In fact, the Fire Report rejects "media" accounts of the survivors very similar statements about how the fire started--despite the fact survivors left the building at different exit points, were immediately arrested, and had little opportunity to get together to "concoct" similar stories.

a. Fire Report Asserts People Not Trapped In Building

Despite the extensive testimony about people being trapped by falling debris, blocked stairways, jammed doors, caved-in walls, and rapidly spreading smoke and fire, the Fire Report concludes, "Considering the observable means of exit available, we must assume that many of the occupants were either denied escape from within or refused to leave until escape was not an option." (JDR:Fire Report:9) The report does not mention what other fire experts would emphasize: "Cult members may have had less than five minutes to escape after the fire began. . . the fire produces an enormous amount of toxic gases that cause confusion." [479][357]

b. Fire Report Implies Flammables Present for Purpose of Arson

The Fire Report notes, "the physical evidence collected at the scene included the remains of several metal containers commonly used for the storage of flammable liquids." (JDR:Fire Report:3) It does not bother to mention that the 90 or more inhabitants of Mount Carmel were totally reliant on coleman lanterns fueled by kerosene, on butane gas heaters, and on propane gas for heat and light. Again, the Fire Report does admit that, "it is possible that some flammables were spilled inside the building as a result" of the tanks activities. (JDR:Fire Report:9)

The report also exhaustively lists all the flammable materials found on survivors' shoes and clothes, as if this is evidence of arson. However, since fire investigators evidently did not interview survivors, they had no way of knowing that Davidians sometimes had to crawl on their hands and knees because of fuel knocked over by ferret rounds.

According to Newsweek, just after the fire arson investigators found "metal lantern-fuel containers with what appeared to be deliberate punctures." [480][358] However, neither the Justice factual report or the Fire Report mentions such punctures in the containers and this may have been more FBI disinformation. The Fire Report also denies that the "CN" gas, as it mistakenly calls CS gas, could have started or contributed to the fire.

c. Fire Report Asserts Accidental Fire Impossible

The report attempts to debunk what it calls "another theoretical explanation reported by the media," i.e., that tanks rupturing "a propane cylinder or flammable liquid container" started the fire. Again, it does not admit that this is survivors' testimony. The Fire Report claims, "if this had happened, an immediate vapor air explosion or flash fire would have occurred involving the vehicle itself. It did not happen. All law enforcement vehicles were well away from the building prior to the start of the fire." (JDR:Fire Report:9) However, one assumes that the tanks are sufficiently well armored to withstand proximity to such a relatively small fire. And, as we have ~~seen~~, tanks smashed into the building minutes before the fires began.

d. Fire Report States Separated Points of Origin Means Arson

The report states, "Fires were set in three separate areas of the structure identified as points of origin 1, 2, and 3. This investigation establishes that these fires occurred in areas significantly distant from each other and in a time frame that precludes any assumption of a single ignition source or accidental cause." (JDR:Fire Report:3) In an April 26, 1993, news conference, Gray told reporters, "We believe it was intentionally set by persons inside the compound. . .It is the opinion of the investigative team that this fire started in the interior of the building in at least two separate locations, at approximately the same time." These locations "were significantly distant enough from each other that they couldn't have been set by the same source at the same time." [481][359] He asserted "evidence showed a time gap between the last battering of the compound by an FBI armored vehicle and the appearance of the blaze." [482][360]

Again, the fire investigator is denying what we can plainly see, that a last barrage of tank attacks occurred in separate locations within the six to eight minute period during which the fires began. He also rejects simple common sense: if even one massive tank smashes deep inside a rickety wooden building filled with dozens of lighted lanterns, propane tanks and other flammable containers, that one tank alone could start two or three fires in widely separated parts of the buildings. If two or three tanks do so within a short time period, all three could start fires. Also, the further inside the building the fire starts, the longer it will take after tanks have withdrawn for outsiders to see the fire. And even if outsiders see fires appearing at about the same time, it does not mean they started at the same time. Depending on how great the "fire load" of flammable materials in each room, fires could have started several minutes apart, but appear to outsiders to start virtually simultaneously.

e. Fire Report Downplays Breaching's Role in Spreading Fire

The report lists as "contributory factors" to the fire's spread: poor construction; highly combustible stored products such as baled hay, large quantities of paper, and other flammables; strong wind; and "breaching operations." The report admits "the FBI removed several large sections of the building's exterior walls. . .these openings are contributory to the fire's spread." However, it asserts that the "fresh air" the openings let in ". . .while fanning the flames. . .would have also lowered the concentration of carbon monoxide. . .increasing the amount of time a person might have survived if trapped inside." This weak apology for the breaching operation's contribution to spreading the fire at least admits that people might have been trapped inside. (JDR:Fire Report:6)

f. Gray Inaccurately Claimed Escape Tunnel Was Usable

During his press conference Paul Gray claimed, "I do believe that a person could have survived the fire. I could speculate that there was ample room in the open pit area for everybody to have gotten into." [483][361] However, this statement directly contradicts what Gray put in his own report regarding the buried bus that served as a tunnel system connected to the open pit: "It is also possible that the escape route planned included the aforementioned tunnel system accessible through an opening in the floor at the west end of the building. A significant amount of structural debris was found in this area indicating that the breaching operations could have caused this route to be blocked." (JDR:Fire Report:10)

[484]20. JUSTICE DEPARTMENT COVERUP

Because Justice Department officials were involved more deeply in the disastrous decisions at Waco than were their Treasury Department counterparts who approved the original BATF raid, the Justice Department coverup is much more systematic than the Treasury Department coverup. The Treasury Department had to explain only ten deaths and the Department could easily blame several agents and officials for going against orders and covering up their misdeeds. However, the Justice Department had to explain away the horrible deaths by fire of more than 80 people--25 of them children--who had made a very credible promise to surrender within a few days. The Justice Department did dismiss FBI Director Sessions shortly after the April 19th fire, but on other grounds related to incompetence and misconduct, not on his handling of the Waco standoff.

a. Conflicting Statements About Reasons for the Assault

In the days after the fire, Attorney Janet Reno and her representatives, and President Clinton and his representatives, emphasized "humanitarian" reasons for the assault, ones that presumably would play well with the public. Janet Reno began a media blitz where she repeatedly said in a press conference and on several television programs: "I approved the plan. I am responsible. The buck stops here." She explained the prime reasons for the assault were the "fatigue" of the hostage rescue team and ongoing evidence that "babies were being beaten." [485][362] Reno's efforts were extremely successful. Justice Department spokesperson Carl Stern asserted that while on April 19th the reaction from those who contacted the Justice Department was 10 to 1 against the assault, on April 20th, 8 out of 10 said they agreed with Janet Reno! [486][363]

In his April 20th news conference Bill Clinton emphasized that Reno had told him that the primary reason for the assault was: "It's because of the children. They have evidence that those children are still being abused, and that they're in increasingly unsafe conditions." [487][364] White House communications director George Stephanopoulos said, "I think there is absolutely no question that there was overwhelming evidence of child abuse in the Waco compound." He alleged David Koresh was "marrying children" and "sexually abusing children" and that children were "being taught how to commit suicide, how to put guns in their mouths, how to clamp down on cyanide. That is child abuse by any definition of the word. It was continuing, it was going on." [488][365] However, in the months after the assault, Attorney General Reno has come to admit that "she may have misunderstood (FBI) comments to her and that there was no evidence of recent child abuse by the Davidians." [489][366]

Clinton also attacked Koresh. "The bureau's efforts were ultimately unavailing because the individual with whom they were dealing, David Koresh, was dangerous, irrational and probably insane. . .Mr. Koresh's response to the demands for his surrender by Federal agents was to destroy himself and murder the children who were his captives as well as all the other people there who did not survive." [490][367] Reno agreed. "I have absolutely no doubt at all that the cult members set (the fire) , based on all the information that has been furnished to me." [491][368]

However, while Janet Reno and Bill Clinton may have stressed "humanitarian" concerns and Koresh's "wickedness," it is obvious that the FBI had other concerns. In a briefing for reporters FBI Director William Sessions said his agency had "no contemporaneous evidence" of child abuse during the siege. A reporter writes that Larry Potts, Assistant Director of the FBI's Criminal Division, asserted that the FBI's prime reason for going forward with the assault was that Koresh had "treated their efforts to negotiate with contempt," he was never going to surrender voluntarily, and "it was not in the nature of law enforcement officials who had seen the Federal agents killed during the initial raid on Feb. 28, to let the cult go on with its way of life." Potts told the reporter, "These people had thumbed their noses at law enforcement." [492][369] Columnist Paul Craig Roberts wrote of the true concerns underlying the government's action: "If the Branch Davidians could hold out, others might get the same idea. Heavens, people might stop paying their taxes. There was too much rebellion in the defiance of authority." [493][370]

b. Justice Department Attempted to Forgo Full Investigation

During his April 20th news conference President Clinton said: "We want an inquiry to analyze the steps along the way. Is there something else we should have known? Is there some other question they should have asked?" He appointed Philip B. Heymann, a Harvard Law School professor who had been nominated to be Deputy Attorney General, to lead the Justice Department investigation of the incidents at Waco. The New York Times reported that not-yet-confirmed Heymann told an interviewer that "investigators would not look at the decision to assault the compound with tanks and tear gas, which was made by Attorney General Janet Reno and William S. Sessions, Director of the Federal Bureau of Investigation. Department officials have not yet decided whether even to pose questions to Ms. Reno, he added. `I never wanted us to claim that we're doing a Warren Commission report that will try to stand for the agents, or that this will be the ultimate truth about what happened,' said Mr. Heymann." Because Congress and Americans overwhelmingly supported Reno and blamed the Branch Davidians for the fire, other unnamed officials "concluded that nothing could be gained by looking more closely at her order to carry out the assault." The article also reports, "Ms. Reno urged that there be `no recriminations,' and Justice Department officials involved in the investigation have interpreted that to mean that the decisions of the department and the FBI would be immune from review." [494][371]

The day after the story appeared, and after several Congressional representatives criticized this revelation, the Justice Department contended that Heymann "had erred" and that there would be a full investigation. Officials gave different reasons for Heymann's inaccurate statement, including his not being fully briefed, his attempt to reduce expectations about the review, and, most revealingly, that his "remarks reflected a division within the Justice Department about how closely it should look at the events, with some high officials arguing forcefully that the inquiry should be more limited, to focus only on what should be done in future cases." [495][372]

c. No Testimony Taken Under Oath

Deputy Attorney General Philip B. Heymann told reporters the review group did "not have the authority to issue subpoenas or grant immunity but could refer findings of wrongdoing for criminal prosecution." [496][373] Presumably, this means that agents and officials were not interviewed under oath. The Justice Department report makes no reference at all to these issues. There is also no evidence that any of the FBI agents or officials who testified before Congressional committees were sworn in, though they still could be prosecuted were it proved they had lied to a Congressional committee. As we noted in the BATF section, much of the truth about what really happened at Waco will come out only during the trials of the Branch Davidians, civil law suits against the government or through an independent investigation.

d. Review Team and Outside Expert Conflicts of Interest

First, it is questionable whether Deputy Attorney General Heymann or Assistant to the Attorney General Richard Scruggs, working as they do under Attorney Janet Reno, could do any "independent" investigation of errors in the Justice Department decision-making or in the actions of the FBI. Heymann was also the head of the Criminal Division under President Jimmy Carter, so he has a long history of loyalty to the institution, as well as to his superiors.

The most noted conflict of interest is Heymann's appointing another former Chief of the Justice Department's Criminal Division, Edward S.G. Dennis, Jr., to review the procedures, decisions and actions of the Justice Department in the Waco matter. This choice came under scathing attack by William Safire who noted that Dennis was in charge of the botched investigation of Banca Lavoro and its relation to Iraq-gate: "Ms. Reno's Criminal Division directed Atlanta prosecutors to shoot down the explosive case with a plea bargain, avoiding a public trial that would have exposed the machinations of the Bush-Thornburgh-Dennis crowd. How could Ed Dennis not be grateful? His judgment about the Waco fiasco: `there is no place in the evaluation for blame, and I find no fault.' One hand whitewashes the other." [497][374] Mary McGrory also criticized the decision to end the Iraq-gate inquiry: "During the campaign, Bill Clinton indignantly promised to get to the bottom of it. But a deep incuriosity has set in, and so far his Justice Department has accepted the finding of an in-house whitewash headed by retired Judge Frederick Lacey." [498][375]

According to James L. Pate, as U.S. Attorney in Philadelphia, Dennis also oversaw the investigation of the Philadelphia police department's bombing of MOVE in 1985. Another MOVE veteran assigned to review the Waco disaster was Los Angeles Police Department Chief, who was formerly Philadelphia's police commissioner. Pate writes: "If one was looking for two guys who might empathize with heavy- handed cops who screwed up, the phone numbers of Willie Williams and Eddie Dennis would be a must." [499][376]

Another questionable Heymann appointment was Israeli professor Ariel Merari of Tel Aviv University as an outside expert. Professor Merari currently has a contract with Mr. Heymann to write a book, something which technically does not violate federal guidelines. Professor Merari's report does not offer any criticisms, only suggestions for improving future law enforcement efforts. Another former Heymann associate was more critical. Harvard's Alan A. Stone, M.D. first requested a "complete record of the events at Waco." [500][377] When he finally issued his report it was extremely critical.

Former FBI director William Webster also was asked to be an outside expert and review the Justice Department's action. Since Webster authorized the creation of the FBI's Hostage Rescue Team, it is not surprising he writes, "the unfortunate tragedy at Waco does not in any way diminish my admiration for the men and women who serve in HRT." However, he does urge that such "special response teams," including BATF's, should not be used without the approval of the Attorney General. (JDR:Webster:4)

e. Possible Clinton-Hubbell-Lindsay-Foster Coverup

Associate Attorney General Webster L. Hubbell, the third ranking official in the Justice Department, was the liaison for Waco between the Attorney General's office and the White House and attended meetings there. He passed on FBI chief negotiator Byron Sage's negative assessment of negotiations to Attorney General Reno and was involved in decision-making regarding gassing Mount Carmel. He was with Janet Reno in the FBI Operations Center on April 19th and was the highest ranking official there after she left. On April 19th Janet Reno told television viewers that Hubbell had called President Clinton the afternoon of the fire. During the April 28, 1993, House Judiciary Committee hearing, Representatives Hughes and Sensenbrenner expressed great interest in Hubbell's role in decision-making and about Reno's assertion Hubbell had spoken with Clinton April 19th. One even asked "whether Sessions and Reno were `out of the loop' with Hubbell." Reno told the Committee she had been in error and the Justice report claims Hubbell called White House Chief of Staff Thomas McLarty. (JDR:245)

Webster Hubbell was one of Hillary Rodham Clinton's law partners in the Rose Law Firm in Little Rock as was Clinton's Deputy White House Counsel Vince Foster, who was also involved in Waco decision-making. Foster's July suicide may be linked to mismanaged or even illegal Clinton business dealings associated with the Madison Guaranty Savings and Loan Association and the Whitewater Development Corporation. Hubbell's father-in-law also received a questionable loan from the savings and loan.

Another Clinton-Hubbell-Foster crony, Presidential Advisor Bruce Lindsay, also was involved in Waco decision-making with Hubbell. Lindsay was a senior partner at a law firm which, like the Rose Law firm, received hundreds of thousands of dollars in bond counsel fees from the Arkansas Development Finance Authority. Allegedly doing business with the Authority was a form of "payoff" for Clinton supporters. [501][378] Many suspect that Clinton-Hubbell-Lindsay-Foster cronyism would certainly extend to covering up any errors or crimes related to the massacre of the Branch Davidians. Therefore, the matters of whether Hubbell had some outside-the-chain-of-command contact with Clinton, whether Hubbell helped withhold Koresh's April 14th letter from Reno, whether he was involved in a decision to proceed with the demolition that led to the April 19th fire, all might be subject to investigation as part of Independent Counsel Robert Fiske's probe of obstruction of justice in the "Whitewater" affair.

f. No Fault Finding for FBI and Justice Department Errors or Crimes

At the October 8, 1993, press conference where the Justice Department presented its report on FBI actions at Waco, outside "reviewer" Edward Dennis stated, "I find no fault in the performance of law enforcement during the standoff and the tear gas assault," and asserted "speculation regarding them coming out is irresponsible." Likewise, Deputy Attorney General Philip Heymann said, "We can't come out with a scapegoat when there's no severe blame to be placed." [502][379] However, outside expert Alan M. Stone disagreed, writing: "There is a

view within the FBI and in the official reports that suggests the tragedy was unavoidable. This report is a dissenting opinion from that view." (Justice:Stone:46)

Reporters at the press conference asked Heymann if the Justice report was a "whitewash," especially compared to the Treasury Department report. Heymann answered that the Treasury report found "recklessness (in the initial raid) followed by a coverup," and that in the FBI and Justice Department's handling of the Branch Davidians, the "underlying facts are different." [503][380] Attorney General Janet Reno said: "I'm always concerned about the perception of a white-wash. But I don't go out to seek mea culpas and I don't go out to seek (a report that says) we didn't do anything wrong. I go out to seek the truth..." [504][381] When Alan M. Stone issued his highly critical report of the FBI/Justice Department handling of the siege, Janet Reno refused to comment. The FBI released a statement defending its actions. [505][382]

Despite Reno and Heymann's denials that the Justice report was a whitewash, a number of publications and respected columnists called it just that: the New York Times ("The Waco Whitewash," 10/12/93); the Washington Times ("The truth about Waco, still untold," 10/13/93); Paul Greenberg, editorial page editor of the Arkansas Democrat Gazette; Leonard E. Larsen, a columnist for Scripps Howard News Service; columnist Paul Craig Roberts, former assistant secretary of the U.S. Treasury; and many others.

g. Evidence of Coverup in Justice Department Report

Throughout this report we have noted where the Justice report has failed to provide information--even when it would not seem necessary to "redact" it per law--or has provided questionable information. The examples most indicative of coverup are: no mention of disinformation spread by SACs Jeffrey Jamar and Bob Ricks; failure to specify whether the use of the tanks was illegal; refusal to admit FBI reliance on Rick Ross and Marc Breault or knowledge of Dr. Miron Murray's anti-cult sympathies; failure to name those who recommended and ordered the use of harassment techniques; failure to admit that Koresh's letter was a promise to surrender; failure to state whether the letter was shown to FBI Director Sessions or Attorney General Reno and if not, who withheld the letter from them; failure to mention whether the ground commanders kept control of the whole operation or were given any orders from the FBI Operations Center regarding the speed up of gassing and the order to proceed with demolition; refusal of factual report and Justice Department officials to admit there was an order to proceed to demolition, as Dennis does; no mention of whether agents used "handheld" grenade launchers and why agents were outside their tanks; no mention of discrepancy between Jamar's April 19th comment that three agents saw Branch Davidians starting fires and Justice reports' account of only one; no mention that both Renos Avraam and Graeme Craddock deny the statements the Justice report says they made about Branch Davidians starting fires; no mention of tanks pushing burning debris into the fire; no mention that BATF agents aided in the post-fire investigation; no mention of the chief fire investigator's ties to BATF.

h. No Justice Department Report on Tampering with 911 Tapes

As indicated earlier, during the June 9, 1993, House Appropriations subcommittee hearing, an FBI agent gave a staff member an excerpted tape of the "911" calls between Lieutenant Larry Lynch and Branch Davidians. Waco police said it gave a "false impression of how the event occurred" and Janet Reno promised the department would investigate the editing and dissemination of the tape. [506][383] In

the tape, the section where Wayne Martin complains about helicopters shooting at him has been moved to a time period after the helicopters withdrew from the scene. The Subcommittee Clerk told us that as of January 19, 1994 the Justice Department had not reported back on this possible tape tampering.

i. Weak Recommendations to Prevent Another Tragedy

Representative Don Edwards, chair of the Judiciary subcommittee that oversees the FBI, expressed dissatisfaction with the results of the Justice Department report. "This is essentially an in-house review. It seems to me there is nothing in the report to indicate that if the same crisis arose tomorrow we wouldn't have the same tragic results." [507][384] Outside expert Alan Stone wrote: "One might think that the highest priority after a tragedy like Waco would be for everyone involved to consider what went wrong and what would they now do differently. I must confess that it has been a frustrating and disappointed experience to discover that the Justice Department's investigation has produced so little in this regard. (JDR:Stone:37)

Deputy Attorney General Philip B. Heymann's report, "Lessons of Waco: Proposed Changes in Federal Law Enforcement," recommended increasing the size of the Hostage Rescue Team, closer consultations between Hostage Rescue Team tactical people and negotiators, better behavioral science understanding of non-traditional groups, better crisis management training for special agents-in-charge, and replacing them with more highly trained managers in some crisis situations. (JDR:Heymann:5-14) The new FBI Director Louis Freeh has instituted many of these measures and even insisted that Janet Reno undergo "dramatic tactical training" to help improve the Justice Department's response to crises like the 51-day standoff" with the Branch Davidians. However, according to news reports, Freeh continues to defend the FBI's handling of the tragic episode at Waco. [508][385]

j. Refusal to Consider Discipline or Prosecution of Agents or Officials

During the October 8, 1993 Justice Department press conference, Deputy Attorney General Heymann said that the report had been given to the FBI's new Director Louis J. Freeh who would decide if any disciplinary action was needed. [509][386] A few days later Freeh said a final review of the bureau's handling of the incident was continuing. However, he added, "I do not know at this time or contemplate at this time that any disciplinary action would be taken." [510][387]

The FBI has been conducting investigations into the overly aggressive and irresponsible actions of the FBI Hostage Rescue Team, and its commander Richard Rogers, in the Randy Weaver case, and of the officials who supported them. Freeh has even spoken to agents about possible prosecutions in the matter. And Freeh suspended Assistant FBI Director James Fox for violating repeated judicial admonitions to refrain from commenting on the World Trade Center bombing to the news media. Therefore, Freeh's refusal to look at the overly aggressive and irresponsible actions of the very same FBI agents and officials at Waco must be questioned in terms of a larger, ongoing Justice Department coverup.

[511]21. COMMITTEE FOR WACO JUSTICE CONCLUSIONS

a. FBI and Justice Department Actions Responsible for Branch Davidians Deaths

The Committee for Waco Justice believes that FBI gassing and demolition actions trapped Branch Davidians in fires caused by massive military tanks, causing the deaths of more than 80 people. Therefore, FBI agents and FBI and Justice Department officials responsible for the decision to gas and disassemble Mount Carmel are legally responsible for the deaths of the Branch Davidians. Even if it should be proved beyond a doubt that any fires were started by one or more Branch Davidians, we still believe these decision- makers remain legally responsible for driving the perpetrator(s) to this desperate act and for causing the destruction that trapped so many people in the building when the fires started.

b. Independent Counsel Should Prosecute Responsible FBI Agents and FBI and Justice Officials

Under current law, the Attorney General can appoint an Independent Counsel to identify and prosecute any FBI agents and FBI and Justice Department officials suspected of committing any and all relevant crimes, including the following:

* Official Misconduct for giving the Attorney General misleading information that led to the decision to gassing and demolishing Mount Carmel Center and for any role in covering up any irresponsible or illegal acts.

* Multiple Counts of Intentional or Negligent Homicide or Manslaughter for carrying out an unnecessary and violently executed gassing and demolition of Mount Carmel. Decisions of whether to charge FBI agents with intentional or negligent homicide would depend on further investigations.

* Conspiracy against the Rights of Citizens U.S. Code Title 18, Section 241 reads: "If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured- they shall be fined not more than $10,000 or imprisoned not more than 10 years, or both: and if death results, they shall be subject to imprisonment for any term of years or for life." [512][388]

* Deprivation of Rights Under Color of Law U.S. Code Title 18, Section 242 reads: "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if bodily injury results shall not be fined under this title or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life."

Footnote [513][388] John McCaslin's August 4, 1993 Washington Times column quotes Stacy Koon, one of the two Los Angeles policemen convicted in federal court of felony violations of Rodney King's civil rights: "The government used the same arguments in Waco--the suspect(s) set the tone and the officers responded to it. . .The difference is that we had 82 seconds; the federal government had 50-plus days in Waco. . .They had time to think and analyze and come

Count Ten--Aiding and Abetting the Unlawful Possession of Machineguns: Fatta was charged with aiding and abetting Koresh in the unlawful possession of machineguns during 1992 and early 1993.

The government's "conspiracy theory" is based on the "Pinkerton doctrine" that holds that a person involved in only a minor part of crime, like driving a getaway car, is as responsible for a crime like robbery or murder as the person doing the crime. Robert Dawson, a professor of criminal law at the University of Texas Law School, said that if the government is using the Pinkerton standard, then the standard will be the "`should have anticipated' standard--should the Branch Davidians have been able to anticipate that stockpiling weapons and other firearms violations could result in the death of those Federal agents?"

Defense attorney Tim Evans insisted, "Conspiracy has become the darling of the government's nursery. It allows the Government to throw a huge net over everyone connected to a case and makes the jury sort it all out. The danger of that is that sometimes people get convicted based upon guilt by association." Graham Craddock's attorney Stanley Rentz said, "If their theory is `in for a penny, in for a pound,' then they should have indicted everyone who was in the compound. They've left some people out of the indictment altogether. The sad thing is that most of the people who were really active leaders perished in the fire. So now the Government is going after whoever is left just to placate themselves. I guess it's just hard for them to walk away from it." [520][393]

>From currently available evidence, it would seem the government has pursued a strategy of selective prosecution. Three individuals especially seem to have been spared prosecution, even though evidence against them may be as strong as that against some of those being prosecuted.

* Donald Bunds: One of BATF Agent Davy Aguilera's most convincing evidences of "intent" to manufacture illegal weapons mentioned in his February 25, 1993 affidavit was David Block's allegation that Donald Bunds, a mechanical engineer, operated a metal lathe and milling machine that had the capability to fabricate firearm parts. Block said he had observed Bunds designing a machinegun on a computer. Prosecutors have already entered into evidence equipment that one Texas Ranger said could have been used to fabricate firearm parts. [521][394] Bunds drove towards Mount Carmel on February 28th, but was prevented by police from returning. It is quite possible he was not prosecuted because his wife Jeannine and daughter Robyn may be two important prosecution witnesses. Even if they are not, this may be a "reward" for their cooperating with BATF Agent Aguilera in the original investigation.

* David Thibodeau: Earl Dunagan's April 18, 1993 affidavit does not list him as being seen carrying a gun during the February 28th shootout or standing guard after it. It is quite possible he was not prosecuted because his mother, Balenda Gamen, was the most vocal and articulate of the Branch Davidian family members. She appeared on numerous television shows and surely would have conducted a damaging media campaign against the government had her son been indicted.

* Rita Riddle: Earl Dunagan's April 18, 1993 affidavit does list Rita Riddle as having carried a gun on February 28th. She has been an active organizer for the defense since the fires. It is possible she was not prosecuted because her daughter Misty Ferguson was seriously disfigured during the April 19th fire and the government feared the girl would appear at the trial, displaying her wounds. Riddle's

sister-in-law Ruth Ottman Riddle has been charged, even though Dunagan's April 18, 1993 affidavit mentions only that she was seen sewing tactical vests. It is possible she is being prosecuted because, as David Koresh's typist during his writing of the First Seal, she could testify convincingly about his efforts to finish his book so that he and his followers could leave Mount Carmel. She was a very effective spokesperson on television following the April 19th fire.

[522]PRE-TRIAL MOTIONS AND JURY SELECTION

Certainly the early stages of the trial have only reinforced beliefs that the trial is rigged. A prejudiced judge seems to have "handpicked" the jury--and done all he can to ensure the jury does not see any literature that might persuade them to "vote their conscience."

In December of 1993, Judge Smith "ordered that jurors' identities be kept a secret and attorneys not talk to the media. (He) indicated that he is taking unusual steps to ensure the safety of the defendants, jury members and witnesses in the trial." [523][395] Defense attorneys Joe Turner and Terry Kirk immediately filed an objection to Smith's order for an anonymous jury, believing it would hurt the jury's presumption of innocence. Their motion stated, "The prospective jury members are likely to assume that because their names are being kept secret, they must have reason to fear the defendant or her fellow Branch Davidians." [524][396] In January Smith explained to the press he was concerned Branch Davidian jurors might be mistaken for "jurors in an organized crime trial going on at the courthouse." [525][397]

However, it turns out that the real reason Judge Smith demanded an anonymous jury was his fear that the jury would receive information from an organization called the Fully Informed Jury Association (FIJA). FIJA intended to send jurors leaflets containing general and well-documented information about jury rights--including the right of the jury to find defendants innocent if they disagree with the law or feel that the government acted improperly. They had done the same thing in the Randy Weaver case and some believe this helped win acquittal for Weaver. Smith had first taken the unusual step of restricting public access to the names of all potential jurors in the federal jury "wheel" for the Western District of Texas. On December 30, the judge admitted "The Court is not as concerned about the possibility of the Defendants or their associates threatening the jury members," instead, it was concerned with protecting the jury panel because, "It (has) been reported that an organization plans to attempt to hand out leaflets to potential jurors about how they should ignore the law and follow their conscience." [526][398]

Some believed Judge Smith silenced the eleven defendants' numerous attorneys so that their statements to the media could not affect potential jurors. Once the trial started, television news broadcasts showed some attorneys speaking freely to the press. However, in late January Judge Smith again barred defense attorneys from speaking to the press, saying "statements or information intended to influence public opinion regarding the merits of this case" would not be tolerated. Smith said he would monitor media sources and threatened daily contempt proceedings for any comments he found attorneys had made. [527][399] This is just one more evidence of a prejudiced judge participating in a government coverup of crimes against the Branch Davidians.

During the jury selection process, Judge Smith demanded defense attorneys submit questions to him and disallowed their directly

questioning potential jurors. Instead, he asked the questions. The only choice left for the attorneys was a limited number of "strikes." This selection process makes it more difficult for the attorneys to weed out prejudiced individuals. [528][400] Meanwhile the Dallas Morning News filed a motion seeking to overturn Smith's decision to bar most of the media and public during juror questioning, stating the public and the media have a "constitutional right of access to the examination of potential jurors in a criminal trial." [529][401] The fact that Judge Smith interviewed potential jury members in his shirtsleeves, without his judicial robes, so that he would not "intimidate" them was widely reported by the press. Jury selection was complete in two days--an unusually short period for such a complicated trial with so many defendants- -and the trial began on January 12, 1994. Should any Branch Davidians be convicted, the restrictive jury selection process might provide grounds for appeal.

Paul Fatta's attorney Mike DeGeurin requested Judge Smith prohibit prosecutors and witnesses from using the word "cult" because it has a "negative and dangerous" connotation that might influence a jury against the defendants. The motion noted that Assistant U.S. Attorney J. Ray Jahn has already stopped using the word. [530][402] The judge rejected the request. [531][403] Defense lawyers then asked Judge Smith to prohibit prosecutors from using prejudicial words like "compound," "Ranch Apocalypse," and "Mighty Men." [532][404] We assume he also rejected this request because some of the terms have been used in the trial.

As in all trials, the prosecution will first present its evidence of the defendant's guilt. Defense attorneys will have the opportunity to cross-examine all witnesses. Assuming the case is not dismissed for lack of evidence, the defense will then present its case. The prosecutors will also have the opportunity to cross-examine defense witnesses, including the defendants, should they decide to testify. Below is an outline of the expected cases to be presented by the prosecution and the defense--and some questions likely to be asked and points raised in cross- examinations.

[533]THE PROSECUTION CASE

The eleven Branch Davidians were charged with conspiracy, in part, because there was little or no solid evidence that any of them shot at or killed any of the four BATF agents who died February 28, 1993. Nor was there evidence that any of them shot at tanks on April 19th or started the fires that destroyed Mount Carmel. Listed below is the evidence the U.S. Attorneys are expected to present to support the ten counts of the indictment:

Physical Evidence: Weapons distributors invoices and United Parcel Service records of legal weapons purchases; hundreds of legal guns, grenade casings and explosives plus any illegal machineguns, silencers and live grenades found after the April 19th fire; any remaining evidence of the February 28th raid, including photographs and charts of bullet ridden vehicles and their positions before being moved by FBI tanks; explosives-related materials allegedly found at the LaVerne, California home; clothing, shoes, other materials soaked with fuel taken from fire survivors; other "evidence" of arson such as fuel containers, wood planks, etc.

Undercover Eavesdropping Devices: While the government admits these recordings are of poor quality, prosecutors will try to use them to prove that the Branch Davidians started the April 19th fire, and probably to prove other aspects of the "conspiracy."

Video tapes: KWTX and BATF footage of the BATF raid, including--if it exists--BATF aerial videotape evidence that Branch Davidians fired first; television news footage and any government video tape of the siege; video tapes of Koresh and other members made inside Mount Carmel during the siege and sent out to be shown to the FBI and family members; television news footage; and aerial infrared video tape and any other government video tape of the April 19th assault and fire. Should the government introduce Gun Owners of America video tapes which are "derogatory to ATF" as evidence Branch Davidians were "indoctrinated" to kill federal agents, the defense can argue both the First Amendment right to free speech and the Second Amendment right to bear arms.

Audio tapes: These might include tapes of the 911 calls, of Koresh's negotiations with BATF agent Cavanaugh, of negotiations during the 51 day siege, of KRLD and CNN radio interviews, and tapes of Koresh's sermons which allegedly show his propensity towards violence.

Documents: These would include any relevant Koresh or Branch Davidian correspondence and Koresh's April 9, 10 and 14th letters to the FBI. (Will the prosecution, like the FBI and Justice Department, only present the first two letters and ignore the last?)

Witnesses--BATF and FBI Agents: Prosecutors will ask them to testify about the planning and execution of the February 28th raid, during the siege, during the April 19th destruction of Mount Carmel, and during the investigation of the pre-and post-fire "crime scene." Defense attorneys are challenging these agents' credibility by exposing inconsistencies in their testimonies and asking them about the lies told by BATF raid commanders.

Gerard E. Lynch, a Columbia University law professor and former Federal prosecutor said, "The defense will clobber them with every mistake everyone ever made in pursuing the case. They will make it a trial on the Government's tactics." [534][405] Former Koresh attorney Gary Coker, who is now representing some Branch Davidian material witnesses, told reporters, "I think people see that almost everybody from (former BATF Director Stephen) Higgins on down has at one time or another lied about this case. And if they would lie about those matters, why wouldn't they lie about other matters that are specific as to criminal charges?" [535][406] David Thibodeau's attorney Gary Richardson asserted, "Our clients said the Feds were lying all along, and they were. . .What our clients were telling us was true. Heads would roll when the truth eventually came out. That's just what happened." [536][407] Some defense lawyers told a reporter privately that they relished the idea of cross- examining the government's witnesses, particularly the BATF's February 28, 1993 raid commanders. Said one attorney, "It'll be the old `Were you lying then and are you lying now routine.'" [537][408] Judge Smith has so far refused to let the defense introduce as evidence the Treasury Department report that criticizes BATF's handling of the raid. However, the judge has allowed defense attorneys to ask questions which have resulted in Texas Ranger and BATF agent testimony that BATF raid commanders lied to them about certain issues.

Witnesses--Paul Gray and other Fire Investigators: Chief fire investigator Paul Gray's close ties with BATF will lower the credibility of his testimony.

Witness--Former "Co-conspirator" Kathryn Schroeder: Prosecutors may call Kathryn Schroeder, whose husband Michael Schroeder was killed on February 28th and whose four children left Mount Carmel early in the siege. She also left during the siege. Papers filed at the time

Schroeder agreed to plea bargain state that she "admitted being an armed guard from the day of the initial raid until March 12th, when she left the compound." [538][409] She probably will testify about Koresh's alleged plan to have his followers turn their weapons on the public in Waco, Texas. [539][410] Defense attorneys may question Schroeder's motives: her desire to ensure that she will be able to see her children again; the fact that she was incarcerated in a mental institution for two months and possibly "deprogrammed"; her possible fear that her September, 1990 arrest in El Paso, Texas, for possession of marijuana and cocaine might have influenced the jury, sentencing judge or future parole boards against her. [540][411]

Witnesses--Branch Davidians Who Left Mount Carmel after February 28th, i.e. "Material Witnesses": Any of those who were at Mount Carmel on February 28th or during the siege may be called. Most probably may not be very cooperative witnesses. However, some may be. Davy Aguilera states in his April 18, 1993 affidavit that on March 6th he talked to a "cooperating individual" who had lived at Mount Carmel for long period of time. This individual claimed to have seen machineguns, grenades and silencers manufactured and had "observed that Howell was attempting to construct a radio-controlled aircraft which can be used to carry explosives." Dunagan's affidavit states that released Branch Davidians claimed that on February 28th they had seen two boxes of hand grenades and Wayne Martin wearing a string of grenades around his neck. It also lists Branch Davidians seen wearing fatigues and carrying rifles, before and during the shooting. Defense attorneys will give these witnesses an opportunity to speak about their religious convictions and the savagery of the BATF attack and the FBI siege against them.

Witnesses--Branch Davidian Children: Defense lawyers believe that if few or none of Mr. Koresh's adult followers prove to be valuable witnesses, prosecutors may call some of the 21 children who left Mount Carmel during the standoff. The law does not shield children from being forced to testify against their parents. [541][412]

Witnesses--Breakaway Branch Davidians: To prove "conspiracy" prosecutors may call some former Branch Davidians. Since most of those who made the most damning statements about Koresh and the Branch Davidians--especially Marc Breault, the Bunds and David Block--have been associated with cult busters, defense attorneys may attempt to undermine their credibility by probing their motivations and their association with "cult busters" committed to destroying "cults" like the Branch Davidians.

Witness--Joyce Sparks: Prosecutors may ask her to repeat her allegations about Koresh's statement about "military action" against Waco. Defense attorneys would question her to discover if she misunderstood a Biblical reference.

Witness--Henry McMahon: Prosecutors may demand Koresh's arms dealer and sometimes partner Henry McMahon testify about the weapons he sold to Koresh and about Koresh's motivations. Davy Aguilera's April 18, 1993 affidavit repeats McMahon's story that Koresh had "observed the `ATF S.W.A.T. Team' training at a vacant house approximately 500 yards toward the compound next to the `Mag Bag'" and that Koresh believed it was "conducted by ATF to assault the compound/Mount Carmel property." The government claims this police training was Koresh's motivation for his arms buildup.

In cross-examination, the defense will ask McMahon to repeat his stories that Koresh keeping guns as an investment, that Koresh invited BATF to see his guns, that Aguilera lied when he said McMahon tried to confuse him about how many guns he had sold to Koresh, and that BATF

lured McMahon into "protective custody" and kept him away from the press and the FBI. If the prosecution does not call McMahon, the defense surely will.

Witnesses--Government Experts: The prosecution may call government "experts" to defend the BATF raid, to testify about David Koresh and the Branch Davidian's alleged mental problems, or to defend the pressure tactics used during the siege and the final assault on Mount Carmel. The defense will try to expose their prejudices and/or lack of competence in dealing with committed religous groups like the Branch Davidians.

[542]THE DEFENSE CASE

Below we list the various counts and the defendants' expected defenses against the charges. Since the main defense is "self-defense" against excessive government force, it will be important to show that the government violated Branch Davidians rights, used excessive force and then tried to coverup their mistakes throughout the whole tragic operation. Attorneys and defendants pray that, as in the Weaver case, a disgusted jury will find the defendants innocent of murder and most or all other charges. Weaver's attorney Gary Spence said at that time, "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." [543][413]

Count One--Conspiracy to Murder Federal Officers, Count Two--Aiding and Abetting the Murder of Federal Officers, Count Three--Using a Firearm During a Crime of Violence, all related to initial February 28, 1993 shootout, forcible resistance of arrest, firing on tanks, and starting the April 19th fire. Attorneys' arguments will probably include the following defenses:

* Legal Right to Shoot Back In Self-Defense Against Out- of-Control Law Enforcement--Defense attorneys may argue that BATF's lack of a "no knock warrant" and obvious use of excessive force in sending 76 heavily armed agents to serve simple search and arrest warrants gave the Branch Davidians the legal right to shoot back in self-defense. They may point to evidence: that BATF raid commanders had done a sloppy job of investigating and were overly influenced by "cult busters"; that they had ignored Koresh's past cooperation with law enforcement, that they planned an unnecessary and dangerous paramilitary raid; that they disobeyed orders and proceeded with a raid despite the loss of surprise; that agents were expecting and prepared for a shootout; that agents shot first and indiscriminately--including from helicopters; and that agent friendly fire even injured or killed their own. This evidence of an out- of-control government agency will support the case that the Branch Davidians had a right to shoot back in self-defense. The fact that the FBI ground commanders also may have exceeded orders in proceeding with the demolition of Mount Carmel despite Branch Davidians' willingness to negotiate will point to an FBI that is similarly "out-of-control." If Justice Department officials are implicated in that fatal command, the defense can argue that "Gestapo"-like action against citizens starts right at the top.

The self-defense argument may also be used regarding the Branch Davidians' resisting arrest during the siege and allegedly shooting at the tanks. It should be noted that the Randy Weaver jury acquitted Weaver and Kevin Harris of charges of resisting arrest, despite the eleven day standoff, because they evidently considered it part of their self-defense against government violence.

Regarding the right to self-defense, one former senior BATF official said, "Irrespective of the situation inside, the notice of authority and purpose must be given. . .Unless the occupants of a dwelling are made aware that the persons attempting to enter have legal authority and a legal warrant to enter, the occupants have every right to defend themselves." [544][414] The Firearm Owners Protection Act of 1986 recognizes the Common Law rule of self-defense, which is that the defender must have reasonable belief that the circumstances of immediate danger warrant self-defense. Section 9.31 of the Texas Penal Codes states: "The use of force to resist an arrest or search is justified: (1) If, before the actor offers any resistance, the peace officer (or persons acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search; and (2) When and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary." [545][415] Whether or not the Branch Davidians knew the law at that moment, they may well have been acting within it.

Even one of the Justice Department's handpicked outside experts, Dr. Robert Cancro, suggested the Branch Davidians were within their rights to defend themselves. "Certainly an armed assault by 100 agents had to be seen as an attack independent of who fired the first shot. If an armed individual enters your home by force and you have reason to believe that person represents a mortal threat, you are allowed to fire a weapon in self-defense in most states. The law does not usually allow the potential attacker to fire first before a response can be called self- defense [546][(JDR:Cancro:3)]

Dick DeGuerin, who believed he would have obtained an acquittal of David Koresh had he lived, explained, "if a warrant is being unlawfully executed by the use of excessive force, you or I or anybody else has a right to resist that unlawful force. If someone's trying to kill you, even under the excuse that they have a warrant, you have a right to defend yourself with deadly force, and to kill that person." [547][416] A reporter wrote, "several lawyers said they expected to see a defense of self-defense, and possibly a claim that residents of the compound were unaware that the attackers were law-enforcement officers." [548][417] Defense attorneys can provide witnesses and tapes to prove Koresh had a sincere fear of attack by George Roden, by others who had threatened the Branch Davidians, and even by government--especially as it continued its surveillance of him even as he tried to cooperate. On February 28th Koresh told KRLD interviewers, "Let me explain the weapons from the beginning. The weapons were bought originally because in the prophecies. . .2000 years ago Christ tried for three and a half years to present the Gospel, right? And the night of his Crucifixion he told his servants, he said, before I sent you out without cloak nor purse nor sword so now I say unto you, if you do not have a sword go sell your cloak and buy one. The Christian Church was not to stand idly by and be slaughtered."

Koresh told Dick DeGuerin in an audio taped March 28th telephone conversation: "I don't care who they are, nobody is going to come to my home, with my babies around, shaking guns around, without a gun back in their face. That's just the American way." Branch Davidian Stan Sylvia, who was in California the day of the raid, expressed his feelings on national television. "These people were on their own property. That didn't give the government right to come in shooting. . .For once in people's lives they stood up for God and what they believed." [549][418]

* First Amendment Rights to Freedom of Speech, Religion and Association--The defense certainly could raise the issue of the rights

of religious minorities to arm themselves for the Second Coming. Kelly Shackleford, an attorney for the Rutherford Institute, said of groups arming themselves for the Apocalypse, "There are a ton of these groups out there, and part of their faith is to ready themselves for the end. They have to be ready to fight on the side of the Messiah. There is nothing illegal about that." [550][419]

The defense may argue that defendants are being prosecuted merely for associating with Koresh; it does not mean defendants necessarily agreed with all his ideas, were in on all his plans or followed all his orders. According to the New York Times, pretrial motions showed a split in the defense team about whether to depict Koresh as a "sincerely motivated teacher of Scripture, whose talks and writings were greatly misunderstood; others have suggested that he cruelly led his innocent followers astray. Still, no defendant has pleaded temporary insanity or suggested. . .being brainwashed." [551][420]

* Government Tanks Started Fire: The government argues setting Mount Carmel on fire was part of the conspiracy. If the prosecution shows the complete infrared video tapes of the tank assaults and resulting fire, the jurors--and the public--finally will have a chance to study the full details of this brutal attack. Defense attorneys and the prosecution probably will differ in their interpretations of the video tapes. Defense attorneys will try to discredit the prosecutions' evidence--surveillance audio tapes, FBI Hostage Rescue Team agents, the "independent" fire investigator--that the Davidians started the fire. If any Branch Davidian survivors take the stand, they will describe how tanks knocked over lighted kerosene lamps and crushed a propane tank, starting the fires in one or more different areas within a few minutes. The defense may provide experts who will explain just how the tank rammings easily could have trapped people in the building and started one or more fires.

Count Four--Aiding and Abetting the Attempted Murder of a Federal Officer and Counts Five and Six--Using a Firearm During a Crime of Violence, all related to Bob Kendrick, Delroy Nash and Michael Schroeder's attempts to reenter Mount Carmel on February 28, 1993. The prosecution will have to convince the jury that Kendrick and Nash resisted arrest by BATF agents. The defense may argue the Kendrick and Nash did not fire at agents or that if they did so they fired in self-defense.

Count Seven--Possession of an Unregistered Destructive Device on April 19, 1993 and Count Eight--Conspiracy to Possess and Unregistered Destructive Device related to Graeme Craddock's carrying a live grenade. The prosecution will have to prove Craddock was indeed carrying a live grenade; Craddock's defense may argue he was not, that someone planted a live grenade on him, or that he carried the grenade in self-defense.

Count Nine--Conspiracy to Possess and Unlawfully Manufacture Machineguns and Count Ten--Aiding and Abetting the Unlawful Possession of Machineguns Paul Fatta's defense attorney may assert he had no knowledge of machineguns produced or planned for production before February 28, 1993.

The defense will try to call witnesses who can prove their defense points. Considering that Judge Smith is obviously prejudiced against the Branch Davidians and has announced he will not let the defense put the government on trial, he may reject many of their requests to call specific witnesses. Those they may try to call include:

Witnesses--Sympathetic: In addition to cross-examining sympathetic witnesses called by the prosecution, the defense will try to call

Branch Davidians and other witnesses who can provide information to discredit prosecution witnesses or provide evidence that the Branch Davidians were not crazed fanatics totally under David Koresh's control. They will call individuals who can testify that the Branch Davidians knew they were under surveillance and tried to cooperate and to talk about their experiences during the February 28th raid or during the siege. Doubtless, they will also try to call David Koresh's attorney Dick DeGuerin and Steve Schneider's attorney Jack Zimmerman, both of whom saw evidence of BATF damage to the building during the raid, and experts like Dr. Phil Arnold and Dr. James Tabor who convinced David Koresh to exit despite the FBI's ignoring his efforts. They may even try to call the Justice Department's most critical outside experts--Dr. Nancy Ammerman, Dr. Lawrence E. Sullivan, Dr. Robert Cancro and Dr. Alan M. Stone.

Witnesses-former BATF Director Steven Higgins, former FBI Director William Sessions, Attorney General Janet Reno, Other High Government Officials: Defense attorneys have asked that these individuals be called as witnesses. They may be used to discredit lower ranking officials and agents who lied to them or to show that governmental incompetence, violations of rights and excessive force were approved by top officials.

Witnesses--The Defendants: Under the Fifth Amendment to the U.S. Constitution, the prosecution cannot compel defendants to take the stand or testify. If any defendant agrees to testify, he or she can not take the Fifth Amendment in response to any questions about alleged crimes relevant to the case but must answer honestly. It is unknown whether any defense attorneys will call their clients to protest their innocence or to describe their self-defense against an out-of-control goverment assault on February 28, 1993.

[552]CIVIL RIGHTS AND WRONGFUL DEATH LAWSUITS

On May 3, 1993, attorney John P. Coale filed three notices of claim against the FBI and the Bureau of Alcohol, Tobacco and Firearms. He is seeking $18.06 million for the deaths of his wife, Lorraine, and two daughters, Rachel, 14, and Hollywood, 2. Questions about who started the fire, or deaths by gunshot, are irrelevant to the case, Mr. Coale asserted. "We're alleging no matter what happened to these children and this woman, it was foreseeable." [553][421] Sylvia said the survivors should regroup and build a school at the site. Referring to possible forfeiture of the property, he declared, "Why should the FBI of all people be awarded that land, with what they did to my people, to my wife and children? Their lives were lost on that land, and I don't want to see that done in vain." [554][422]

In October the first of numerous lawsuits under the Federal Civil Rights Act was filed in Waco by North Carolina's Cause Foundation on behalf of Oliver Gyarfas, Sr. and Elizabeth Gyarfas. Their daughter Aisha Gyarfas Summers, 18, and her child Startle Summers, 1 year, died in the April 19th fire. According to Kirk D. Lyons, attorney and executive director of the Cause Foundation, the suits are intended less to compensate the victims of the government's excessive use of force, as they are to defend the Constitution from government encroachment and to see that another situation like Waco never happens again. The Foundation intends to file more suits after the conclusion of the Branch Davidian trials. Both suits should shed additional light on the governments' violations of rights, excessive force and coverup.

It is possible that some BATF and FBI agents and officials could be

held individually liable in such law suits. In January, 1993, a U.S. District judge ruled that the city of Philadelphia and senior officials would have to face trial in a civil law suit brought by survivor Ramona Africa. Philadelphia police fire bombed MOVE headquarters to drive members out of their home, killing 11 members of the group. While former Philadelphia Mayor Wilson Goode was immune from the lawsuit because he was not involved in the decision to fire bomb the MOVE house, his three top lieutenants can be sued. [555][423]

[556]SOCIAL, ECONOMIC AND POLITICAL UPHEAVALS AND THE YEAR 2000

Justice Department outside expert Lawrence E. Sullivan wrote in his report: "If history be any judge, the change of millennium only seven years from now will be viewed as a momentous, highly charged turning point in history for many religious communities. The shift of millennia will likely be viewed as a seismic rupture in time, a break through which one may glimpse powers that transcend time, and provoke many to act in unconventional ways as they respond to messages read in the signs of an unconventional time." (JDR:Sullivan:11) We cannot ignore indications that religious zealots, survivalists, gun-toting drug gangs, gun- loving "right to bear arms" activists, tax protesters, and even secessionists will all begin or increase challenges to local, state and federal authorities as we approach the year 2000.

[557]MILLENIALISTS AND SURVIVALISTS

Religious believers put the "Laws of God"--or some spiritual entity--above laws made by governments. Most consider government, and especially the federal government, to be enemies of religious freedom. In America millions of Christians are apocalyptics or millenialists convinced that Jesus will return in the midst of violent apocalypse, very possibly in the year 2000. There are also "new age" millenialists. Elizabeth Clare Prophet's Church Universal and Triumphant has predicted nuclear war as a precursor to a new age of enlightenment. And tens of thousands who celebrated the "Harmonic Convergence" in the late 1980s believe that as the millennium approaches we will experience economic collapse and the dissolution of nation states, followed by a rebirth of civilization. Many millenialists are survivalists, preparing for the inevitable collapse of law, order and food distribution networks during the time of tribulation. Many millenialists and survivalists arm themselves out of fear that governments, roving gangs, or hungry hordes from the cities will attack them during these coming times.

One millennialist movement which particularly alarms law enforcement is the Christian Identity movement, also called Christian patriots, who believe that Northern European whites are the racial descendants of the Biblical people of Israel and want to break up the United States into racially and culturally separate nations. The movement has about 25,000 hardcore adherents and another 150,000 hangers- on. One of its leaders, Pete Peters, has a cable television show, "Truth for Our Times," which promotes their views. [558][424]

Many millennialist groups regard the government's destruction of the Branch Davidians to be a symbol of the government's eagerness to destroy their religious groups as well. Some may even believe it was indeed one in a series of prophesized events that will lead to the Second Coming of Christ--especially because, much in line with the

Book of Revelation, floods ravaged the midwest and fires and earthquakes ravaged California after Koresh's death.

Millennialist groups surely will arise in other parts of the world. In November of 1993, thousands of followers of self-styled messiah Maria Devi Khrystos, leader of the "White Brotherhood," poured into Kiev, Ukraine. They were expecting the end of the world, to be marked by her crucifixtion, resurrection and ascension in to heaven in a ball of flame. Authorities arrested hundreds of followers, who promptly went on hunger strikes, and then arrested Khrystos and her husband for hooliganism and seizing state property. [559][425]

Sociologist James Aho of Idaho State University predicts, "As we get closer to the millennium, there will be more and more people arming themselves for the end of the world." [560][426] The Washington Post writes, "Experts on millennial groups said that if there is a lesson to be learned from Waco, it may well be that law enforcement officials ought to be aware of the potency of millennial beliefs. Throughout the 1990s, interest in end-of-time prophecy will grow, as the current millennium draws to a close." [561][427]

[562]DRUG-PROHIBITION-RELATED VIOLENCE

The Treasury Department appendix which reviews the history of BATF mentioned the "prohibition-related rise in crime and use of firearms" during the 1920s and 1930s. Much of today's violent crime is also prohibition-related, but now it is related to the prohibition of psychoactive drugs, not alcohol. The twenty-five-year-old "War on Drugs" has suppressed supplies of the popular and relatively safe drug marijuana and ensured that dealers promote dangerous and addictive--but more easily smuggled and transported--drugs like cocaine and heroin. The attraction of hefty illegal profits has led to just the sort of struggles over territory and violence between armed gangs that occurred during alcohol prohibition. (Rising taxes on cigarettes also increases cigarette-bootlegging-related crime!)

Because such a high percentage of criminal arrests and imprisonments are related to non-violent drug crimes, the justice system must give early paroles to violent rapists, thieves and murderers to make room for those given long mandatory sentences for using or distributing small amounts of marijuana or cocaine. There is little doubt that 25 years of drug prohibition has created far more prohibition- related violence than 15 years of alcohol prohibition. Moreover, there is far greater random violence and violence by children than ever experienced under alcohol prohibition. Gang violence is decimating the young black male population since poor, inner-city black males see few opportunities as lucrative as dealing illegal drugs.

Some consider drug prohibition itself to be a form of religious persecution against new religious movements which arose during the 1960s and advocated using psychoactive drugs as a path to spiritual enlightenment. It was a case related to Native Americans' use of peyote which led to the U.S. Supreme Court's Oregon vs. Smith ruling that so undercut religious rights. In response, hundreds of religious groups of every description joined together to pressure Congress to pass the 1993 Religious Restoration Act. However, even this act provides scant protections for those who want to use psychoactive drugs for religious purposes.

The War on Drugs has led to serious abuses of American's constitutional rights and freedoms by law enforcement: use of unreliable informants, inadequate investigations of alleged crimes,

increasing use of entrapment, judicial rubber-stamping of search warrants, improper use of deadly force, growing use of unjustified "no knock" warrants, increasing violations of due process of law, improper use of forfeiture proceedings to augment law enforcement budgets, and growing use of the military in domestic law enforcement.

One tragic forfeiture-motivated case is that of Donald Scott, a California millionaire who owned property bordered on three sides by a national park. On October 2, 1992, Los Angeles Sheriffs, National Park and Forest Service representatives, national and California Drug Enforcement agents and the National Guard raided Donald Scott's home, on a tip that marijuana was located on the property. Hearing a commotion, Scott ran to the living room, gun in hand, and was killed as he obeyed demands he drop his weapon. The local District Attorney's office admitted that one reason for the raid was the "desire to seize and forfeit the ranch for the government." [563][428] Drug prohibition has fostered accelerating gang and police violence.

[564]GUN-PROHIBITION-RELATED VIOLENCE

Alcohol-prohibition-related gun violence led to the first national gun laws. Likewise, drug-prohibition-related gun violence is prompting calls for more and stricter enforcement of these laws. After many years of effort, the Brady Bill handgun registration law was recently passed. Treasury Secretary Lloyd Bentsen has proposed putting 80 per cent of gun dealers out of business by raising the annual licensing fee by 2000%. Many politicians call for banning "assault weapons" and President Clinton has discussed registering all guns.

The "right to bear arms" community is furious. Nationwide its organizing efforts are mushrooming. Unlike outlawing drugs, regulating and restricting gun ownership goes against a powerful American mythology--that only an armed citizenry can protect itself against an oppressive government. (Members of the Committee for Waco Justice believe that during this century non-violent action has proved to be more successful; nevertheless, individuals should not be deprived of their right to defend themselves in extreme situations where they have no other choice.) Many groups nationwide currently are planning demonstrations for April 19th, "Patriots' Day." That it is also the anniversary of the government's destruction of the Branch Davidians in its attempt to enforce gun laws is not lost on gun owners' rights activists.

The tragedy in Waco may be just a foretaste of what will happen as the government tries to restrict the ownership of guns in the United States. While some columnists and politicians said Waco was an example of why we need gun control, the Committee for Waco Justice is one of many groups that insist that it was the enforcement of gun laws that triggered the disaster. We fear that we may someday see a "War on Guns" more terrifying than the current War on Drugs. Gun prohibition will only expand the already huge black market in illegal guns and bring about a rise in gun-prohibition-related crimes and gangs. The same attitudes and practices that have undermined the rights of drug users and dealers are undermining the rights of gun owners and gun dealers. More and more innocent legal gun owners--as well as individuals merely accused of owning illegal guns--may find themselves raided and assaulted by out-of-control law enforcement.

The massacre of the Branch Davidians is an important factor in bringing together those who oppose drug prohibition with those who oppose gun prohibition. On January 10, 1993, the date of the opening of the trial of the eleven Branch Davidians, a coalition consisting of

two leading drug legalization groups, four gun owners' rights groups, and four civil liberties groups wrote President Clinton requesting he create a commission to review unlawful policies of all federal law enforcement agencies. [565][429] We include more details about the coalition in a later section.

[566]ECONOMIC UNREST AND TAX REBELLION

Disorganized economic protest, like the Los Angeles riots, remains a continuing threat. However, government often is less concerned about these crisis than about organized economic protest, especially tax resistance. Today the average individual pays almost 50 per cent of his or her income in local, state, and federal taxes, a percentage which will only continued to rise. Already 18 percent of Americans fail to file tax returns and many more grossly underreport their incomes. Most are people without political ideology. However, many are religious or political ideologues convinced that the government is ripping them off, that the income tax is illegal, or that God has better purposes for their wealth than sending it to "Godless" politicians. Some are libertarians who believe taxation is theft and others are war tax resisters who will not pay for war or for government violence against citizens. A small percentage are "20 somethings" convinced that the social security system will fold before they receive a cent.

Meanwhile, millions of people who do pay taxes have joined local, state and national anti-tax groups which recommend and engage in lobbying to bring taxes down. America's growing federal deficit, ever rising taxes, and economic stagnation are already giving rise to radical anti- tax movements. However, it is unlikely they will be able to effect the kind of change they want through the electoral system because the majority of those who bother to vote are recipients of tax benefits: government employees, social security, medicare and medicaid recipients, pensioners, and employees of government contractors. If national health care is passed even more people will be drawn into the welfare net.

[567]SECESSIONISTS AND SEPARATISTS

In fact, the passage of any compulsory national health care program might be the last straw not only for tax protesters, but for millions of Americans who still abhor what they consider to be socialist solutions. One indication of this is an October, 1993 column by libertarian conservative columnist Walter Williams: "Bill Clinton's efforts to forcibly impose socialized medicine on our nation has answered a question gnawing at me for quite some time. The question is whether we have reached a point where those of us who love liberty, private property rights, rule of law and the Constitution given us by our Founding Fathers should organize to make preparations to secede from the Union. . .The fundamental question totally ignored is whether federalized medicine is authorized by the U.S. Constitution. My thorough reading of our Constitution found no authorization for Mr. Clinton's plan. . .The only peaceful resolution is that of secession. . .After all, the right to part company is the most effective human safety valve, no matter whether it's divorce, quitting a job or secession. If there's a ban on parting company, somebody's likely to be treated like a dog. . .I hope that secession wouldn't be bloody. And it wouldn't be if the nation's socialists adopted the attitude of live and let live. But if they don't, liberty-loving people shouldn't roll over, play dead and take socialists' abuses without imposing high

costs in return." [568][430]

Williams read this column to millions of people when he filled in for vacationing talk show host Rush Limbaugh during the last week of 1993. During the show he explained that the moral justification for secession is found in the Declaration of Independence which contains in its first paragraph the sentence: "Whenever a government becomes destructive to these ends, it is the right of the people to alter or abolish it."

On the December 28, 1993 show, Williams described the Utah-based Committee of 50 states, which is chaired by former governor Jay Bracken Lee. The Committee has proposed "The Ultimate Resolution," a resolution which--if endorsed by 38 state legislatures--would dissolve the entire federal apparatus when the federal debt reaches $6 trillion. The president, Congress and the federal judiciary would be fired. Each of the 50 states would become a separate and sovereign nation, free to come together to form a new confederation. The Ultimate Resolution contains a provision whereby any attempt to suspend or eliminate the U.S. Constitution would automatically cause the states to take back all the powers they have delegated to the federal government. [569][431] Williams endorsed this resolution.

A number of ideological groups--anarchists, libertarians, greens, bioregionalists, states' rights-ists and African- American, Hispanic-American and white separatists--endorse secession or recommend the break up of the United States into a number of nations or into confederations of communities. Many citizens of Hawaii, Texas, Alaska, and Vermont already have strong secessionist sentiments. Should economic and political turmoil increase in the future, American secessionist movements might grow as well. Should Quebec break away from the rest of Canada, it doubtless will further inspire secessionists in this country.

Demographics also has secessionist implications. Demographers predict that by the year 2050 the population of the United States could be more than 50% African-American, Hispanic, and Asian. In 1992 Columnist Carlos Alberto Montaner wrote: "It would be interesting to predict the United States' reaction if faced with a possible ethnic secession. Would it be necessary, like in Yugoslavia, to send in U.N. troops to keep the peace, or would the country react in a civilized manner like Czechoslovakia? Fortunately, this question won't have to be answered for 50 years. We shall see then." [570][432]

## [571]COMMITTEE FOR WACO JUSTICE RECOMMENDATIONS RESPECT THE BILL OF RIGHTS

How will politicians and law enforcement react to growing social, political and economic unrest? Will they return to surveillance and disruption of legal, non-violent political and religious groups? Oregon's Backwoods Home Magazine reports that U.S. Senate Bill 8, the Crime Control Act of 1993 would allow the seizure of homes, computers, vehicles and other property used to plan or stage any activity that results in violence, even if that violence is done by hooligan passerbys or political opponents. Will the federal government continue to entrap innocent citizens into breaking laws, as it did Randy Weaver? Should the federal government detect any hint of illegal action, will it continue making forceful executions of search and arrest warrants on shaky and biased evidence, as it did against the Branch Davidians? Will the federal government continue to persecute any political or religious group that merely discusses armed

self-defense against potential illegal violent state attacks upon them? Or will it reform law enforcement practices so that citizens no longer have to fear such illegal attacks?

Finally, will the FBI expand its program of hiring informants and "agents provocateurs" to infiltrate potentially violent groups, even to the point of helping them carry out their violent acts? Will it be proven that the FBI's hired informant did in fact build and plant the World Trade Center bomb? Law enforcement has a legitimate role in stopping violent attacks against citizens or government facilities once it has credible evidence that such an attack is imminent. However, law enforcement should not be paying informants to use violence against Americans!

Federal agents' murder of Vicki and Samuel Weaver, Donald Scott, 86 or more Branch Davidians--and possibly the six World Trade Center bombing victims--demonstrates that federal law enforcement agencies are out of control. The Committee for Waco Justice believes that these violations of Americans' rights are inevitable with the growth of "big government." For big government needs ever growing power to enforce more and more laws, to intervene in more and more foreign nations' affairs, to levy more and more taxes--and to handle public discontent with these laws, interventions and taxes. Barring the unlikely event of a rapid and thorough downsizing in the scope, size and taxing powers of local, state and federal governments, how can we protect ourselves from governmental violations of rights, excessive use of force and collusive coverups of those crimes? Below, the Committee for Waco Justice presents a list of recommendations for protecting citizens against abuses of government power. Perhaps the most important way to stop government crimes against citizens is to revive respect for the Bill of Rights. The BATF and FBI assaults on the Branch Davidians violated eight of the ten sections of the Bill of Rights. Therefore we present our recommendations categorized under each of these first ten amendments to the U.S. Constitution. These recommendations are based on lessons learned from government excesses in the above- mentioned incidents and other, less prominent, ones. While this is not an exhaustive list, enacting these suggestions would certainly prevent another government massacre like the massacre of the Branch Davidians.

[572]1. Protect Right to Freedom of Religion, Speech, Press, Assembly and to Petition the Government

* Issue a Presidential Executive Order to ensure that only the President or the Attorney General may approve any law enforcement actions against "non-traditional" religious or political groups in order to ensure that there is credible probable cause, that non-coercive avenues of resolving possible violations are explored and that excessive force is not used. (As proposed by Justice report outside experts Lawrence E. Sullivan and Richard J. Davis.)

* Ensure that only the President or the Attorney General may designate a group or category of groups suspected of breaking federal laws as being "violent" and therefore subject to governmental surveillance. Such groups should also have the right to appeal to these highest authorities if they discover such surveillance and want to challenge it.

* End all governmental spying on peaceful political and religious groups, including new religious movements some call "cults." Ensure that acting BATF director John W. Magaw ends his monitoring of "cults."

* End the use of the term "cult" as a category justifying investigative activities, use of force, criminal prosecution, or governmental regulation or liquidation of any group labeled a "cult."

* Release all currently classified files relating to Reverend Jim Jones and the Jonestown incident in Guyana.

* Prevent law enforcement agencies from receiving information from organizations--such as the Anti-Defamation League and the Cult Awareness Network--bent on harming or destroying other groups with which they have political or religious differences.

* Consider Justice Department investigation of the Cult Awareness Network, its representatives and any allied groups for "conspiracy against the rights of citizens" for possible false allegations to law enforcement regarding various religious groups, including the Branch Davidians and The Family.

* Make no laws or regulations restricting the press and media from covering law enforcement actions. Allow them access to allegedly dangerous situations on an "at-your-own- risk" basis. (During the June 9, 1993, House Appropriations Subcommittee meeting, WNBC reporter John Miller said "having an ongoing cooperative mechanized procedure for bring the media on such operations where appropriate. . .lessens the potential of having stragglers." [573][433])

[574]2. Protect Right to Keep and Bear Arms

* Repeal all laws regulating or banning the ownership, manufacture, transfer, or sale of firearms and munitions, except those prohibiting individuals certified to be mentally unbalanced or felons convicted of violent crimes from owning weapons. However, private homeowners, businesses, and communities should retain the right to ban such weapons from their private property.

* Abolish the Bureau of Tobacco, Firearms and Firearms and turn any of its legitimate functions over to state and local authorities.

* Ensure all agencies enforcing regulations and laws regarding firearms and munitions act in accordance with and be held accountable to provisions of the Firearms Owners' Protection Act.

[575]3. Protect Right to Refuse Quartering of Soldiers

* Repeal all laws which permit government to quarter soldiers in wartime; while the U.S. Constitution allows this--"in a manner to be prescribed by law"--such laws are unnecessary.

* Repeal any existing laws or regulations permitting federal agents to occupy private property for surveillance or other law enforcement activity without the express permission of the innocent property owner.

[576]4. Protect Right to be Secure Against Unreasonable Searches and Seizures, including Necessity for Probable Cause before Issuance of Warrants

* Include in all statutory and administrative regulations "first

warning" provisions insuring investigators first warn individuals and corporate entities of possible violations; this insures individuals are not investigated, searched, arrested, tried and punished for violations of arcane, confusing and conflicting regulations.

* Establish a method by which individuals discovering themselves to be under investigation regarding violations of administrative regulations or non-violent crimes may cooperate with such investigations to prevent warranted searches and arrests with the potential for employing excessive force.

* Require federal agents assure the judge or magistrate not only that they have probable cause but: (a) that local and/or state authorities have been consulted about any suspect's past cooperation with law enforcement; (b) that agents justify the use of extraordinary force or unconventional entry methods, and explain why these do not constitute a "no knock" raid; (c) that agents certify that abandonment of any ongoing negotiations in a siege situation are merited; (d) that agents report if any jurisdictions involved in, or informed of, any action against a property subject to forfeiture have attempted to purchase the property in the past.

* Establish disciplinary procedures to prevent judges and magistrates from simply "rubber stamping" search and arrest warrants.

* Educate law enforcement agents regarding individuals' common law and statutory right to self-defense against excessive police force or against searches where the police do not announce who they are or provide the citizen with sufficient identification. Because of the national spate of break-ins by criminals claiming to be police, this right to self-defense might need to be strengthened by appropriate statutes.

* Do not ease restrictions on the use of illegally obtained evidence--the exclusionary rule--as the 1993 Crime Control Act would do.

[577]5. Protect Right to Indictment by Grand Jury, Trial by Jury, Avoid Double Jeopardy, Refuse to Bear Witness against Oneself, Due Process of Law, and Just Compensation for Public Taking of Property

* Require judges to inform jurors of the common law right to judge the law, as well as the facts of the case, and to acquit a criminal defendant, or to find against the government in a civil trial, whenever they consider the law unjust or oppressive.

* Require judges to inform jurors of the common law practice that if the jurors find the government's conduct unacceptable, even if the law is valid, they may acquit the defendant.

* Offer just government financial restitution for all losses suffered by persons who suffer searches and property damage where no crime has been committed or where damages are disproportionately high in relation to the alleged violation.

* Offer just government financial restitution to those arrested, indicted, tried, imprisoned, or otherwise injured in the course of criminal proceedings that do not result in their conviction.

* End the practice of pre-conviction seizures of property in civil and criminal cases.

[578]6. Protect Right to A Speedy Public Trial, Impartial Jury, Knowledge of Accusations, Confront Witnesses, Compel Favorable Witnesses, and Assistance of Counsel

* Permit criminal defendants and civil parties in a court of law a reasonable number of peremptory challenges to proposed judges, similar to the right to challenge proposed jurors.

* Educate all law enforcement agents, including members of "elite" special response teams, to the fact that loyalty to the unit does not excuse the violation of individual or constitutional rights or participation in coverups of same. They frequently must be reminded that they have taken an oath of loyalty to the constitution, not to their unit.

* End the increasingly common practice of charging attorneys as co-conspirators to justify violations of the attorney-client privilege.

[579]7. Protect Right to Trial By Jury In Civil Suits

* Eliminate the doctrine of "Sovereign Immunity" which holds that the State--or its agents--may not be sued without its permission or held accountable for its actions under civil law; replace it with the principle of full liability for damages. Government employees and agents should be held personally legally and financially liable for any violations of citizens rights, including excessive use of force.

[580]8. Protect Freedom From Excessive Bail, Excessive Fines, or Cruel and Unusual Punishment

* Repeal the Racket Influenced and Corrupt Organizations (RICO) laws which have been applied too indiscriminately, used to compel excessive fines and jeopardize First Amendment rights of all Americans to organize political demonstrations, and, especially, civil disobedience. Crimes like repeated trespass and destruction of property should be dealt with through existing local and state laws.

* It should not be considered an "excessive fine" for any government employee or agent involved in rights violations, excessive use of force, and other illegal activity to lose not only their jobs, but all law enforcement-related government pensions and benefits.

[581]9. Protect Rights Retained by the People

* Facilitate the people's access to government information by ending secret classifications which prevent the public from obtaining information regarding government policies and actions (exceptions being such matters as private information coerced by government agents and defensive military plans). Government should expedite the processes by which individuals may obtain such information.

* End restrictions on the people's right to use some or all currently restricted psychoactive drugs. (This should also be considered under First Amendment religious rights.)