

"FBI was warned noise broadcasts would backfire if used against sect"

by Lee Hancock ("The Dallas Morning News", December 30, 1999)

During the FBI's efforts in 1993 to force sect members to surrender, agents used loudspeakers to blast loud music and other ear-splitting noises into the compound.

FBI commanders said that nonstop nightly Nancy Sinatra songs, shrieks of dying rabbits, Christmas carols and Tibetan monk chants would increase the Branch Davidians' discomfort and sleep deprivation.

But FBI behaviorists, in recently disclosed confidential memos, argued that the noise broadcasts that began March 22 would backfire with such a committed religious group.

Fredrick Lanceley, a retired FBI negotiator who was at Waco, said in 1993 that negotiators warned "they knew of no situation where this ever worked or where the FBI had ever failed to look bad in the media for doing this."

Blaring sacred Buddhist chants - brought in by an FBI official whose wife got the recording at a museum where she volunteered - was particularly offensive, he and other negotiators said.

Gary Noesner, the FBI's negotiation coordinator in the first half of the siege, told Justice Department investigators after the incident that he cautioned FBI commander Jeff Jamar "that the FBI would look foolish and it wouldn't work." Mr. Jamar promised the chants would cease and then explained when they continued that the agent who played them "doesn't have anything else to do at night," Mr. Noesner said.

Intervention from FBI Director William Sessions, prompted by a letter of complaint from the Dalai Lama, Tibet's exiled spiritual leader, finally silenced the chant broadcasts, FBI records indicate. Other broadcasts continued.

"FBI missteps doomed siege talks, memos say - Criticisms were omitted from Davidian report"

by Lee Hancock ("The Dallas Morning News", December 30, 1999)

FBI tactical missteps in the first weeks of the Branch Davidian siege hopelessly derailed negotiations, cementing the sect's "bunker mentality," top FBI negotiators and behavior experts told the Justice Department.

Their assessments, detailed in previously undisclosed Justice Department memos obtained by The Dallas Morning News, faulted the FBI's reliance on punitive paramilitary actions, saying they doomed efforts to coax more Davidians out and escalated the magnitude of the tragedy.

"The negotiators' approach was working until they had the rug pulled out from under them" by aggressive tactical actions, Agent Gary Noesner, FBI negotiation coordinator for the first half of the siege, told a Justice Department investigator in August 1993.

An FBI behavioral profiler said in a separate Justice Department interview that he warned early on "that they should not send in the tanks, because if they did so, children would die and the FBI would be blamed even if they were not responsible."

"The outcome would have been different if the negotiation approach had been used. More people would have come out, even if Koresh and his core never did," said the expert, Pete Smerick, who is now retired.

One of his memos during the siege warned that strong force would "draw David Koresh and his followers closer together in the 'bunker mentality' and they would rather die than surrender." The depth and detail of such criticisms, collected in the Justice Department's 1993 review of the Waco confrontation, were not included in the massive report on the siege.

Justice Department officials declined to comment.

Lawyers representing Branch Davidians in a wrongful-death lawsuit said they had never received copies of the memos despite repeated requests for such documents.

Koresh blamed Although the 1993 Justice Department review acknowledged rifts within the FBI's Waco team and touched on negotiators' complaints, it concluded that Mr. Koresh, the Branch Davidians' apocalyptic leader, was solely responsible for the deadly outcome.

Like other recent revelations, the confidential memos, other internal documents and interviews by The News raise questions about the official account of what happened. Among the revelations: * Top negotiators and profilers said FBI missteps were driven by the apparent desire to intimidate and anger the Branch Davidians. FBI leaders thought that "these people were criminals, and you must punish criminals," Mr. Smerick said in a 1993 interview. "Punishment was not the way to get them out." * The negotiating team warned in vain that escalating pressure would deepen the sect's "bunker mentality" and validate Mr. Koresh's doomsday prophecies.

* FBI Director William Sessions feared using tanks, but his early orders not to send them near the sect's home weren't heeded.

* Negotiators recommended using CS tear gas because they feared that FBI tacticians would be allowed to use it anyway. By endorsing incremental gassing, negotiators hoped to restrain those who "just wanted to throw the gas in." * Negotiators and behavioral experts weren't consulted before the approved gas plan was abandoned and tanks began demolishing the compound.

The negotiating team had warned in writing that gas might "lead to panic and a violent response" and that moving tanks near the compound made that probable.

Sect members responded with a fire that consumed the compound and left Mr. Koresh and more than 80 followers dead, evidence shows.

Why the rush? "Any negotiator would have told them that dismantling the building would provoke a violent response," Agent Noesner said in 1993. "Anyone would have seen the risk. What was the rush? The plan had been to wait. The agents were safe in the tanks . . . so that even though they were drawing fire, that did not justify dismantling the building.

"It was a bad decision to start knocking down a building containing women and children because people could have been crushed," he said. "This was all a manifestation of the action imperative, the sense that we have to do something because it has to end today." Mr. Smerick and Mr. Noesner, who now oversees the FBI's negotiation program and hostage-rescue team, declined to comment, citing an investigation by independent counsel John Danforth.

FBI commander Jeff Jamar and hostage-rescue team commander Richard Rogers, both retired, declined to be interviewed.

Both have dismissed criticism and have maintained that they did everything possible to resolve the siege peacefully. Both have said that the the FBI negotiated for 50 days and exhausted alternatives before using gas. But in confidential Justice Department interviews and in interviews with The News, some of the FBI's top negotiators and behavioral scientists in Waco gave sharply opposing accounts. Agent Noesner was perhaps the most critical. He demanded and got an interview by a Justice Department review investigator after hearing that an Austin-based agent loyal to the FBI's Waco commander had been interviewed, one memo indicated.

The FBI agent who replaced Agent Noesner as negotiation coordinator, Clint Van Zandt, recently said that he would have given a critique similar to Agent Noesner's but wasn't asked. Mr. Van Zandt, now retired, said the negotiators' position was "akin to sitting on the bow of the Titanic and watching the iceberg approach." Official defended Retired FBI Agent Byron Sage of Austin said recently that Mr. Jamar's familiarity with his candor led to his being given a key role after he arrived in Waco on Feb. 28, 1993, as part of the FBI's critical-incident negotiating team. "I was hand-picked by Jeff," he said. "He didn't want any yes-man." In his own 1993 Justice Department interview - cited repeatedly in the department's review - Mr. Sage said the sect never truly negotiated. Like Mr. Jamar, his supervisor before and after the siege, Mr. Sage said FBI disagreements did not alter the outcome.

"Could we have gotten a few more people out? Maybe so, and God knows, any life that we could've saved would've been important. But it's a total what-if. The fact remains that we did everything we could," he told The News.

Mr. Sage acknowledged that some colleagues' opinions were harsher than the Justice Department report but added that "the Justice review appropriately reflected the consensus opinion of what happened." "Why put things in that are intentionally inflammatory if it does not go to the case in chief as to whether decisions were made properly and based on the best information available?" he said. "When we're debating this minutiae, we need to

step back and realize that for 51 days, every single day, those people had every opportunity to come out safely." The standoff began when a gunbattle broke out as agents from the federal Bureau of Alcohol, Tobacco and Firearms stormed the Branch Davidians' rural compound to search for illegal weapons and arrest Mr. Koresh. Four ATF agents and several sect members died.

The FBI was asked to resolve the ensuing standoff, and Mr. Jamar, head of its San Antonio district office, took charge. Agent Noesner, other FBI negotiators and specialists, including the hostage-rescue team, poured into Waco.

Losing ground Agent Noesner and others told investigators that negotiators began losing ground after Mr. Koresh reneged on a March 2 surrender promise.

"Frustration and anger were exhibited by . . . Jamar and the tactical elements and, contrary to earlier assurances, the tactical elements moved onto the Branch Davidian compound," Agent Noesner said.

Mr. Smerick told a Justice Department investigator that he and a colleague wrote early memos voicing concern "that bureau commanders were moving too rapidly toward a military resolution of the situation." They and others proposed backing off, but that only irritated FBI commanders, Mr. Smerick and others said.

"There was no recognition by management that everything Koresh perceives is part of the negotiation process," FBI negotiator Fred Lanceley told a Justice Department investigator in 1993.

"Tanks driving by, helicopter flights, press conferences, all have an impact. When the negotiators told Koresh . . . that no one would harm them if they came out, and they saw tanks out front, it was not very convincing," he said.

FBI officials said that they needed heavy military tanks because the Davidians had .50-caliber guns and had bragged of having other munitions capable of penetrating armor.

The officials also wanted to show superior government might - a display that raised eyebrows at the White House, internal Justice Department and FBI documents indicate.

Mr. Sessions said in a post-siege interview that on March 7, he received a Justice Department complaint that "the president had learned that the FBI was contemplating moving tanks into the area." Mr. Sessions said he shared Justice Department concerns about the implications and was "alarmed that television coverage of the movement of the tanks and combat engineering vehicles would portray an FBI policy contrary to the 'wait and negotiate' strategy," an FBI internal report stated.

Mr. Sessions said he was told that tanks would be used because Mr. Koresh had lied, cursed and "shown hostility." He said he then ordered FBI headquarters and Mr. Jamar not to move tanks without his approval.

The next morning, a top Justice Department official reported that a TV network was showing tanks rolling around the compound. "This development, Director Sessions said, confirmed his worst fears," the report stated. No comment Mr. Sessions, who resigned under pressure that year, has declined media interviews.

FBI frustrations grew as the Branch Davidians delayed surrender. By March 5, 21 children and two adults had come out. The trickle then stopped for a week.

After two sect members surrendered March 12, FBI commanders cut the compound's power. Mr. Jamar said he wanted the Branch Davidians to suffer with his agents in the cold.

"He did not perceive this as creating any breach" with Mr. Koresh, an FBI report stated.

A regional FBI official sent to help Mr. Jamar, Bob Ricks, said in an FBI interview that Mr. Jamar wanted to isolate the compound and had "some pressure from FBI HQ to take this step." Agent Noesner and other behavioral experts were stunned. They said Mr. Jamar did not consult them and refused to reconsider despite warnings that the Branch Davidians would feel that they were being punished after cooperating, Justice Department memos say.

"If the power had not been cut . . . additional people would have come out. This could have set a positive example where people would have continued to cooperate and built to a peaceful resolution," Agent Noesner said.

Surrenders stopped until two adults gave up March 19. Seven others followed three days later in what Agent Noesner said negotiators considered "the most positive day they had experienced. There were indications . . . that 20 people would come out the next day." But within hours, FBI tanks began pushing the sect's cars from the front of the compound.

The Justice Department memo noted that Agent Noesner called it "the worst decision he's seen in 21 years with the FBI." Mr. Jamar said the cars were a threat because they would offer Branch Davidians cover in a gunfight.

"But the cars had been there for days, and they never felt the need to move them before. There were no new snipers' threats at that time. A guy from the HRT [hostage-rescue team] said it was just to 'piss them off,' " Agent

Noesner said. "The negotiators told them no one would be coming out if they cleared the cars." Mr. Jamar waved off those warnings and pleas that the next day might bring breakthrough surrenders, retorting that "at that rate, we will never get them all out of here," Agent Noesner said.

"Noesner thinks he is stating the opinion of all of the negotiators when he says that the decision on March 12 to cut off the power and the decision on March 21 to remove vehicles after seven people had come out were not just matters of poor timing, but were absolutely critical decisions that changed the outcome," the report stated. Mr. Lanceley told Justice Department investigators that he was so concerned that he went directly to Mr. Jamar. Ready to leave He then got a call from his boss at the FBI's behavioral science unit: He was no longer wanted in Waco.

Mr. Lanceley, now retired, said recently that he was ready to leave. "I said, 'I want to get out of here, because all of these people in that compound are going to die, and I don't want to be here when it happens.'" On March 22, Agent Noesner and others said, the negotiators felt that negotiations were "broken." After a last surrender on March 23, talk from the compound was consistently bleak: that negotiators were powerless and that the FBI was untrustworthy, Agent Noesner said. "The Davidians were not going to release anyone else."

"FBI Waco Tactics Questioned"

(**"The New York Times", December 30, 1999**)

DALLAS (AP) -- The FBI abandoned negotiations too early in favor of more aggressive measures during the 1993 standoff with the Branch Davidians in Waco, previously undisclosed FBI interviews indicate.

Some FBI negotiators blamed their own agency's reliance on punitive paramilitary actions for failing to entice more sect members out of their Mount Carmel compound, according to Justice Department memos obtained by The Dallas Morning News.

"The negotiators' approach was working until they had the rug pulled out from under them" by aggressive tactical actions, a Justice Department investigator was told in August 1993 by Agent Gary Noesner, FBI negotiation coordinator for the siege's first half.

The agent who replaced Noesner, Clint Van Zandt, said the negotiators' position was "akin to sitting on the bow of the Titanic and watching the iceberg approach," the newspaper reported in today's editions.

The depth of such criticisms, collected during the Justice Department's 1993 review of the Waco confrontation, was absent from the department's massive report on the siege.

David Koresh and about 80 followers perished during an inferno at their compound on April 19, 1993. The government says the Davidians died by their own hands as government tanks rolled in.

In a Justice Department interview, an FBI behavioral profiler said he warned early "that they should not send in the tanks, because if they did so, children would die and the FBI would be blamed even if they were not responsible."

"The outcome would have been different if the negotiation approach had been used. More people would have come out, even if Koresh and his core never did," profiler Pete Smerick, now retired, said.

One of Smerick's memos during the siege warned that strong force would "draw David Koresh and his followers closer together in the 'bunker mentality' and they would rather die than surrender."

The Justice Department review acknowledged rifts within the FBI's Waco team and touched on negotiators' complaints, but concluded that Koresh was solely responsible for the deadly outcome.

Justice Department officials did not return a telephone call today from The Associated Press.

FBI Agent Byron Sage said in a 1993 Justice Department interview -- which was cited repeatedly in the department's review -- that the sect never truly negotiated. Sage, based in Austin, said FBI disagreements did not change the outcome.

"Could we have gotten a few more people out? Maybe so, and God knows, any life that we could've saved would've been important," Sage told the newspaper. "But it's a total what-if. The fact remains that we did everything we could."

Special counsel John Danforth, appointed in September to investigate the controversy, has said he wanted to determine whether any government gunfire was involved.

"Report: Govt. OKs Waco Gunfire Test"

("The New York Times", December 23, 1999)

DALLAS (AP) -- The Justice Department has agreed to an infrared test that may help settle the question of whether federal authorities fired shots at the Branch Davidian compound at the end of the deadly 1993 standoff, The Dallas Morning News reported today.

The decision was contained in a letter Wednesday from Deputy Waco Special Counsel Edward Dowd Jr. to a federal judge in Waco, the newspaper said.

"We believe that the agreed upon format could result in significant information related to the question of whether there was gunfire emanating from government positions on April 19, 1993," Dowd said in the letter to U.S. District Judge Walter Smith.

Lawyers for the Davidians contend that infrared aerial surveillance footage taken by the FBI at the end of the siege proves that shots were fired by government agents into the compound.

"There are people at the FBI who must be quaking in their boots," Mike Caddell, lead lawyer for the Davidians in a wrongful death lawsuit, said of the test agreement. "Given their performance in depositions in the last two weeks, they either have no idea what's on their own infrared tapes or they must know it's gunfire."

Government agents have denied firing shots on the final day of the 51-day standoff. Davidian leader David Koresh and more than 80 followers died when an inferno engulfed the compound. Some perished from the fire, others from gunshot wounds. The government says the Davidians died by their own hands.

The Davidians' lawyers challenged the government in late October to a field test, proposing that an infrared camera be flown above a firing range to record test shots from weapons like those carried by government agents and Davidians.

Justice Department lawyers previously said such a test would be meaningless, in part because the airborne infrared camera used on the last day of the Waco standoff was one-of-a-kind.

The agreement came after the special counsel office learned the type of infrared camera needed for the test still exists, the letter said.

"Volunteers rebuilding Waco church"

by Penny Owe ("The Oklahoman", December 20, 1999)

WACO, Texas -- There are no world-renowned designers or congressmen pushing through funding. The Duchess of York will never visit here.

President Clinton, who recently signed a bill giving the Oklahoma City National Memorial another \$16 million, probably doesn't even know a church is being rebuilt about 300 miles south at Mount Carmel, where April 19 first earned its tragic legacy.

The survivors who share the same horrible mark in time also share a similar goal: To finish building in time for an April 19 memorial service.

For the Branch Davidians, completion will mean a new church, built by volunteers who have made donations to the local hardware store and who have hauled hammers, boards and concrete in their pickups each Sunday for the last 14 weeks.

The scheduled opening -- which is contingent on more donations coming in -- will mark the seventh anniversary of the fire that ended the 51-day standoff between the religious sect and federal agents. In the end, about 80 Branch Davidians were killed, along with their leader, David Koresh, and four agents from the Bureau of Alcohol, Tobacco and Firearms.

"It's not going to ever, ever be like it was when David was there," said Bonnie Haldeman, Koresh's mother and a pediatric nurse who has helped with the church's rebuilding.

"I just wish the world would look at the tragedy at Mount Carmel as they do in Oklahoma City," she said. "They make a big deal out of Oklahoma City, ... but you hear very little about what happened at Waco, as far as the families that lost people and everything. So many people forget."

To say the Mount Carmel tragedy has been mired in controversy hardly does it justice. It has become the rallying

cry for anti-government zealots, who feel vindicated after recent admissions by federal agents that they used incendiary devices and enlisted the help of military Delta forces on the siege's final day.

As Oklahomans know, Timothy McVeigh's belief that the government killed the Branch Davidians may have driven him to bomb the Alfred P. Murrah Federal Building in retaliation. That death toll climbed to 168.

A wrongful death lawsuit filed by Branch Davidian families and survivors continues to fuel questions about the standoff. The trial is set for May 15 in federal court.

Meanwhile, about a dozen Branch Davidians remain in the Waco area. Since their compound burned, they have gathered to worship in each other's homes and in the tiny survivors' museum, a ramshackle building that sits a few hundred yards from the original compound.

"Truth will always rise out of the ashes," said Edna Doyle, a Davidian who lives in a trailer on the 77-acre tract with her son, Clive, who survived the fire. Clive Doyle's daughter, Shari, died in the fire.

Edna Doyle, 84, said she was skeptical when approached about building the church. I'll believe it when I see it, she thought. But now that construction is under way, she is looking at what the church might mean to those who visit.

"I hope it'll bring them salvation," she said. "That they'll learn something that will prepare them for when God comes down to act and to clean up this world."

You burn it, we build it It wasn't the Davidians' idea to rebuild the church. In fact, some were hesitant. The idea came from a radio talk show host in Austin who sympathized with the Davidians. Alex Jones, a 25-year-old libertarian with a passion for questioning government tactics, said he and others asked the Davidians what they could do to help.

One suggested building a church in the same place as the one that burned. So on Sept. 13, Jones began an on-air campaign to raise the money.

His pleas brought in \$1,500 to \$3,000 a week. Folks donated goods and money to Lowe's Home Store in Waco and to a bank account set up for the cause. Perhaps most inspiring were those who drove to the site each Sunday to do the building. The Davidian site is located about 12 miles outside Waco, down some hard-to-find country roads.

"We've had schoolteachers and black single mothers and auto mechanics and doctors. There was even a Jewish rabbi out there one day helping us," Jones said. "Sure, we've had folks in their camo and their camo hats with the militias helping us, too."

The Michigan militia held a fund-raiser and gave \$500. Jones said he gave \$1,800 of his own money. An Oklahoman identified as Lee Chapman dropped off a box of bumper stickers with the project's motto: You Burn It, We Build It. Another Oklahoman, Peter Cook of Red Oak, sent \$20.

Judith Vinson, a west Texas rancher who helped some of the Davidian women get back on their feet after being jailed, gave \$500 for a flagpole and volunteered to hand-stitch a replica of the Davidian flag.

"As far as I'm concerned they were American citizens and they were Texans and they lived there for over 35 years without causing any problems.

"I wanted to give them their flag back."

Motivated by the response, organizers set a goal to open the church by Feb. 28, the anniversary of the initial raid. All the while, Jones said he was told by KJFK-FM management to stop badmouthing President Clinton and to end his church-building campaign.

"It's kooky," Jones recalled being told. "I said, 'Wait, you've never in four years on this station told me what to say or what to do. What are you doing? I've already started it, I can't stop.'"

On Nov. 30, Jones was fired. The talk show host continues to solicit funds on his short-wave broadcasts, but donations have dwindled to less than \$1,000 a week. Altogether about \$35,000 has been raised, but Jones said another \$50,000 is needed to finish the church. So the opening was set back to April 19, when the Davidians traditionally hold a memorial service to remember their dead.

-- More vulnerable --

Money hasn't been the only problem this project has faced. From the first day, vandals have threatened the efforts. They tore down an American flag, pulled up stakes and tried to erase spray paint marking the project. Organizers have since paid upkeep for a homeless man to live in a tent on the property and provide round-the-clock security.

But that didn't stop members of the Ku Klux Klan from driving through and throwing a pack of matches out the window, laughing and shouting "Burn, baby, burn." Young men have tossed beer bottles out their car windows. And others have taunted the workers with how they look forward to roaming through the ashes again.

These threats, and a recognition of history, have prompted builders to coat the 40-by-64 foot church with a no-burn product.

Ownership of the property is also in dispute, which prevents future plans. Living at the entrance is Amo Bishop Roden, who says she was married "by contract" to George Roden, the Davidian leader who was ousted in a gunfight with Koresh years ago.

Other Davidians consider Roden a squatter who pilfers donations from visitors for her personal use. Roden has sued some of the church rebuilders for slander.

Still, the property taxes get paid.

"They each try to get up here to pay it before the other one does," said Peggy Means of the McLennan County Tax Office. This year, Clive Doyle made it there first.

Volunteers also complain about who hasn't helped. Most of the donations have come out of Austin, but also from Alaska, California, Idaho -- everywhere but Waco. There are other voids as well.

"Not one church has come forward to help us, not even to pray for us," volunteer Mike Hanson said. "They just completely clam up like we're building this back for some demons or something. ... Even if they would just bring food out for the workers it will help."

Workers are almost done laying the roof and will soon start installing drywall, a heating and air-conditioning system, bathrooms and electricity.

The church, with a capacity of 200 people, will be larger than the original. With it comes some real concerns among Davidians, who hope people visit for the right reasons. For the last six years, Davidians have been insulated in their gatherings. Having the new church open to the public will make them more vulnerable.

"We appreciate everything that they're doing, and I want the best to happen," said Davidian Sheila Martin, who lost her husband and four of her children in the fire. "I believe that God can bring the people that are sincere there. ... But still, you don't know these people's personalities, things like that."

One observer described the Davidian services as a "bland, Bible study." There's no tambourines or rolling down the aisles. No singing or ceremonial garb. Instead of pews, they use simple bleachers. They call their Sabbath gatherings meetings, not services, and consider them a time of serious study.

Davidians don't recruit members, either. Many of them believe that only a prophet, like Koresh, can make someone a member. They have no leader, so there can be no new members. They simply wait for Koresh to return for the resurrection.

Edna Doyle fears tourists could disrupt their services. And of course, some will have a hard time facing Mount Carmel again.

Yet in ways the new church will become more than a place of worship. To some of the Davidians and many of the volunteers, it is a symbol of victory over evil -- of righting a wrong, in some small way.

"These people are wonderful, kind, decent people. They're sensitive people, too. ... And they're less fanatical than a lot of Baptists I know," Vinson said. "We just had to do something to let them know that everybody out here didn't hate them. We wanted to give them some small piece of their life back. And it's not enough. It'll never be enough."

Hanson's outlook is more ominous.

"When that flag goes up the flagpole, that's going to send a statement that the Davidians are back in business," he said. "And some people aren't going to like that."

"U.S. seeks to shield Waco files: Public disclosure called security risk"

by Lee Hancock ("The Dallas Morning News", December 17, 1999)

Government lawyers have asked a federal judge to block public release of hundreds of government documents recently surrendered to lawyers for the Branch Davidians, arguing that disclosure poses security risks for federal agents and military personnel.

The motion was filed late Wednesday in federal court in Waco, two weeks after lawyers for the sect began challenging what they described as a broad Justice Department effort to keep secret hundreds of documents detailing government actions in the 1993 siege.

Lawyers for the Branch Davidians argued in a Dec. 2 letter that the Justice Department was misusing court rules to try to prevent public access to information that might prove embarrassing to the FBI or other government agencies.

But Justice Department lawyers wrote that they were stamping some sensitive documents "confidential" because of the potential danger to any federal employees who might be publicly linked to the tragedy.

Two unnamed Defense Department employees have received recent threats because of their involvement in the incident, the motion stated. Threats to personnel reported by the Bureau of Alcohol, Tobacco and Firearms and the FBI in December 1995 provide further justification for maintaining the secrecy of some documents, Justice Department lawyers argued.

"The confidential designations are important to the agencies' efforts to foster, to the extent feasible, the safety and security of federal employees involved in law enforcement operations," the 21-page government filing states. "The most compelling example of the need for security is the bombing of the federal building in Oklahoma City, the purported motivation for which was the events at the Branch Davidian compound."

The motion also dismissed arguments by the Branch Davidians' lawyers that many of the documents that have been marked confidential have already been released to congressional investigators and attorneys in earlier trials.

Having to sort out what has been made public before designating documents confidential would take too much time and effort, Justice Department lawyers argued. Objections by the Branch Davidians' lawyers are far too broad because they challenge the government's overall effort to impose secrecy rather than the classification of specific documents, the motion contends.

That creates the "unreasonable burden" of having to defend "each and every" instance in which the government wants to keep documents from public view, Justice Department lawyers argued.

"Moreover, there is no resulting prejudice, since the parties' counsel and their experts are entitled to access the information for purposes of this litigation. Thus the approach taken by the United States strikes the best balance between the goals of full and timely disclosure to the plaintiffs and protecting the safety and security of federal employees."

Lawyers for the Branch Davidians could not be reached for comment Thursday.

Their wrongful-death lawsuit filed in Waco federal court alleges that government actions were directly responsible for the deaths of Davidian leader David Koresh and more than 80 followers.

The sect members died in a fire that consumed their rural compound near Waco on April 19, 1993. The blaze erupted as FBI agents bashed the building with tanks and sprayed CS tear gas into the structure in a bid to force an end to a 51-day standoff.

Arson investigators determined that the fire was deliberately set by Mr. Koresh and his followers, and the government's lawyers have denied any wrongdoing by any government agency.

"Davidian lawyers start questioning FBI agents about cameras, bugging Justice Department bars release of witness names"

by Lee Hancock ("The Dallas Morning News", December 10, 1999)

Lawyers for the Branch Davidians began questioning FBI agents under oath in Washington Wednesday in the first of a series of depositions aimed at determining what happened on the tragic final day of the 1993 Waco

siege.

Justice Department lawyers imposed strict secrecy, using a court order to prohibit the release of even the names of witnesses being called for the series of depositions, scheduled to continue through next week. A department spokesman declined to comment.

Lawyers for the Branch Davidian sect confirmed that agents to be questioned included several involved with the deployment of an airborne FBI infrared camera and a separate airborne still camera used to record the final hours of the standoff.

Also to be questioned were FBI electronics experts assigned to help infiltrate the compound with tiny eavesdropping devices and maintain a system of closed-circuit television cameras outside the building. Although government documents include statements from FBI technicians that the cameras were running on the final day of the siege, no recordings have been released to lawyers who defended Branch Davidians in a 1994 criminal trial or to lawyers involved in the ongoing wrongful death lawsuit.

Other witnesses to be questioned include members of the FBI hostage rescue team who bashed the rear of the compound with tanks and fired tear gas rounds during the final government assault on April 19, 1993.

Some current and former FBI agents and commanders have already been interrogated by the office of Waco special counsel John Danforth. Some have also been interviewed by congressional investigators, as have members of the Justice Department's legal team assigned to defend the massive wrongful death lawsuit filed by the Branch Davidians in a Waco federal court.

Among the key questions are why it took more than six years for authorities to admit that pyrotechnic tear gas was used during the FBI's final assault and whether any government agents fired their guns at the compound during the last hours of the siege.

The compound caught fire during the FBI tank and tear gas assault, and sect leader David Koresh and more than 80 followers died inside. Government arson investigators ruled that the fire was set by compound occupants; FBI officials have maintained that their agents' actions did not contribute to the blaze.

FBI officials have also long insisted that none of their agents fired a single gunshot during the entire 51-day standoff.

But the FBI acknowledged in late August that at least two pyrotechnic tear gas grenades were fired after a former FBI official admitted that their use had been "common knowledge" for years among members of the hostage rescue team.

Attorneys for the sect contend that infrared videotape shot by an FBI airplane during the final assault captured gunfire coming from government positions outside the compound.

Experts hired by the Branch Davidians' lawyers have said the repeated rhythmic flashes captured on the video could have only come from gunfire. An expert hired by the House Government Reform Committee said earlier this fall that he also believed the flashes came from gunfire.

Experts hired by the government have disputed that, and FBI officials say the flashes were probably caused by unexplainable electronic anomalies.

Last month, the federal judge presiding over the wrongful death lawsuit indicated that he would appoint a scientific expert to develop a field test designed to determine how gunfire might appear on infrared videotape recorded by a similar or identical camera.

Michael Caddell, lead lawyer for the Branch Davidians, said last week that he planned to show agents being deposed segments of the FBI's infrared tape from April 19.

He said he also planned to question FBI infrared operators and pilots and seek explanations for what appear to be gaps and erasures in infrared videotapes made on April 19. The tapes also captured repeated orders by FBI pilots to shut off the camera's audio recording capability.

In a letter last week to government lawyers, Mr. Caddell indicated that he also is challenging their efforts to block public access to most of the thousands of documents that they have turned over to the Branch Davidian legal team.

Even government reports, statements and other documents previously surrendered to Congress or submitted to defense lawyers during a 1994 criminal trial have been stamped "Confidential" and "Attorney's Eyes Only" before being surrendered to the lawyers involved in the wrongful death case, Mr. Caddell wrote.

Justice Department lawyers also marked confidential their refusal to answer questions about the number and identities of U.S. Army Special Forces personnel sent to Waco during the siege, he noted.

"It is becoming increasingly clear that this overzealous use of the 'Confidential' and 'Attorney's Eyes Only' stamps are not for the legitimate protection of law enforcement personnel involved in ongoing operations, but rather to keep information concerning the FBI's missteps and bad acts at [Waco] from the American people," Mr. Caddell wrote.

Under the federal court's previous orders, the government has until Dec. 16 to respond.

"Danforth's team gives FBI officials a taste of their own tough questioning"

by Terry Ganey and William H. Freivogel ("The St. Louis Post-Dispatch", December 5, 1999)

FBI agents are accustomed to tough interrogations. But usually it's the agents asking the questions.

Now the tables have been turned. For the past few weeks, current and former FBI officials have been summoned to St. Louis to be grilled by investigators working for John Danforth, the special counsel appointed to find out what happened to the Branch Davidians near Waco, Texas, in 1993.

"They didn't use a rubber hose, and there were no bright lights in your eyes," said Danny Coulson, a former FBI commander who was questioned last month. "They asked real hard questions and insisted that you defend your answers logically."

Coulson, former head of the FBI's hostage rescue team, was one of four former top FBI officials interviewed recently by Danforth and his investigators. Others were Richard Rogers, another leader of the hostage rescue team; Jeff Jamar, the top FBI commander at Waco; and Bob Ricks, a commander and FBI spokesman at Waco.

An FBI source said one FBI commander was chagrined by the accusatory nature of a few questions and another expressed surprise at the wide-ranging nature of the interrogation.

In addition to the former commanders, some current members of the hostage rescue team have been flown in from its base in Quantico, Va., to be interviewed. The team is an elite force of agents who manned the perimeter of the Branch Davidian complex during the 51-day siege. Members of the force also drove the tanks that punched holes in the complex and inserted tear gas into it in to try to roust the Branch Davidians.

"It's intense," said one of the witnesses who had been interviewed. "When the focus of the inquiry is to find out whether you committed federal crimes or not, it's intense."

The questions are designed to determine whether agents fired guns at the complex or started the fire that destroyed it on April 19, 1993. Agents have consistently denied any wrongdoing.

Danforth has set down strict rules of secrecy about his investigation. He and his chief deputy, Edward L. Dowd Jr., have refused to answer questions about what's going on. But interviews with those who have been interrogated provide the first glimpse of what's happening behind the closed doors at 200 North Broadway, where Danforth has established the offices of the special Waco investigation.

The federal witnesses are spending long days answering questions from a battery of lawyers, sometimes including Danforth. Although rest breaks are taken, lunch does not interrupt the interrogations. Instead, food is brought in. The sessions often last all day and sometimes spill over into the next.

One of the most confrontational questions posed was a parting shot to one commander: "You just wanted to end it and were tired of it and that's the reason it went down that way."

The interrogators also asked why commanders hadn't come forward and told Attorney General Janet Reno about the use of pyrotechnic tear gas on the last day of the siege. Reno had insisted for six years that no flammable tear gas had been used.

More than one agent who has gone through the questioning has said that Miriam Miquelon, a former assistant U.S. attorney in East St. Louis, asked the most questions. In 1997, Miquelon successfully prosecuted Amiel Cueto, a once-powerful lawyer in Belleville. One source called Miquelon "a pit bull" in her questioning of the former FBI commanders.

Those questioned were not under oath. No court reporter was present, and the sessions were not tape recorded.

Coulson spent about seven hours with Danforth's people in what he described as "a long and penetrating interview" that Coulson believed was conducted properly.

"I do that for a living," said Coulson, who is now a private security consultant. "You appreciate people who act like they know what they are doing. They are going to find out what happened."

Another witness said the questions from Danforth's team went "way beyond" what happened on the last day of the siege, when the fire consumed the complex and about 80 people died.

"It was the wide-ranging nature of the questions that surprised me," said the witness, who spoke on the condition that his name be withheld. "The interview went over the whole government siege. It certainly doesn't appear that they are trying to gloss over the facts and simply write a report."

When Reno appointed Danforth on Sept. 9, the former Missouri senator said he would try to get to the bottom of four issues: whether government agents shot into the complex, the origin of the fire, the extent of the military's involvement and whether there was a cover-up afterward. Those issues were widely interpreted as limiting the inquiry to the last day of the siege and subsequent events.

But one witness said events of Feb. 28 were also brought up. That's when 76 agents of the Bureau of Alcohol, Tobacco and Firearms raided the complex to search for weapons. In the gunfight that followed, four agents and six Branch Davidians were killed.

If Danforth is broadening the investigation, it doesn't bother Coulson, who believes the inquiry will absolve the FBI.

"I think first of all there are a lot of questions out there that need to be answered," Coulson said. "I think the FBI did the best it could given the circumstances. Were mistakes made? Yes. Did we start the fire? No. Did agents fire weapons? No."

"What agent in his right mind would have gotten out of a tank to expose himself to the withering fire coming from the compound?"

Coulson was not at Waco but was monitoring what was going on from FBI headquarters in Washington. He was the first commander of the hostage rescue team, founded in 1983 to handle sensitive but tense situations that were beyond the capabilities of conventional special weapons and tactics teams. The hostage rescue team's motto is "to save lives."

"These agents measure themselves by a record of rescuing people," Coulson said. "Why shoot at people trying to come out of the compound?" Nine people, some rescued by FBI agents, managed to escape the burning building. Coulson said many who escaped came through holes created by the tanks.

Of the four former commanders questioned, Rogers was closest to the action. He was on the scene at Waco and was responsible for the rescue team's tactics.

He had approved the use of the pyrotechnic gas, which was capable of starting a fire. Reno had banned the use of such pyrotechnic devices, and for years she denied they had been used.

Federal officials say the canister was fired at an underground structure away from the Branch Davidians' complex hours before the fire started.

Rogers said he would not discuss his session with Danforth's investigators, adding that there were more interviews to come. He did not elaborate, and it was unclear whether Rogers was referring to more sessions with the special counsel's office or to upcoming interviews with others who are investigating what happened to the Branch Davidians.

As tough as the sessions with Danforth's investigators were, they may be mere warm-ups for what's to come. Congressional investigators and lawyers for the Branch Davidians also plan to interrogate current and former FBI agents.

Michael Caddell, the Houston lawyer representing Branch Davidian survivors in a wrongful death case against the government, has a plan to depose current and former FBI agents. They will be questioned under oath and reminded of the federal perjury statute that talks about penalties of fines and imprisonment for lying.

Caddell will show them the infrared videotape of the event with the flashes that some experts say represent gunfire from government positions. He will show them the court order for the simulation of the event to determine if gunfire can be detected by infrared cameras under similar conditions.

"I will ask the guy, 'Could that be gunfire?'" Caddell said. "I think he will say, 'It could be gunfire.'"

"Files yield surprises over what's missing"

by William H. Freivogel and Terry Ganey ("The St. Louis Post-Dispatch", December 5, 1999)

One of the unanswered questions about the government siege at Waco is the mystery of the missing pyrotechnic tear gas projectile.

When investigators for special counsel John C. Danforth and Congress recently combed through the 12 tons of evidence from the scene of the assault, their most interesting findings concerned things that were not there, according to informed sources.

The most important item missing was the 44 mm pyrotechnic tear gas projectile that reignited the Waco investigation last summer.

The projectile may be relevant to one of the four major questions that Danforth is trying to answer: whether the government covered up evidence of wrongdoing by government agents. Its disappearance could be evidence that a cover-up began shortly after the siege, investigators say.

The last time the projectile was seen was shortly after the assault on April 19, 1993, that ended in a fire and the death of about 80 Branch Davidians. A photographer for the Texas Rangers -- identified by sources as Kent Kincaid -- photographed the projectile immediately after the siege.

But the projectile was not listed on an inventory of evidence, sources say, and it has not been seen since. The Texas Rangers confirmed that one of their photographers took a picture of the projectile, but said Kincaid could not remember taking the photo.

Mike McNulty, maker of Waco documentaries critical of the government, found the photo of the projectile and the actual shell casing that went with it when he looked through the Waco evidence last year. The discovery was the first proof that the government had actually used devices at Waco that could cause a fire. That contradicted Attorney General Janet Reno's claim that none of the tear gas at Waco was flammable, and it led to her appointment of Danforth to investigate the possibility of government wrongdoing.

Michael Caddell, the main lawyer for the Branch Davidians, says the missing projectile is "critical evidence because it certainly raises the possibility that the government did start the fire." But the Justice Department points out that the pyrotechnic projectile was fired at an underground concrete structure 75 yards from the complex. And it says that intercepts of conversations within the complex prove that the Branch Davidians started the fire themselves -- a view supported by independent arson investigators.

One other finding of the investigators who went through the Waco evidence last month was that there was no evidence to support McNulty's claim that the government may have used a high explosive "shaped charge" to blow a hole in a concrete bunker in which children had taken refuge.

If a shaped charge had been used, it would have left telltale signs, investigators say. There would have been pieces of wire that are used in the charge, and the steel rods in the concrete would have been vaporized. But there were no wires in the evidence, sources say, and the rods were bent but not vaporized.

Waco, FBI and the Branch Davidians: Updates

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