

## **"Defendant in Waco case will have expert look at rifle casings"**

**by Terry Ganey and William H. Freivogel ("The St. Louis Post-Dispatch", December 3, 1999)**

Former FBI sniper Lon Horiuchi will have his own expert examine rifle shell casings that were found in an undercover house near the Branch Davidian complex in 1993.

A court has given special counsel John Danforth temporary custody of the casings as part of his inquiry into what happened at Waco, Texas. The St. Louis County Crime lab may compare the casings with FBI rifles that Danforth has sought.

In court documents filed in Waco Thursday, government lawyers said Horiuchi would call Ron Freels, a crime lab supervisor for the Kentucky State Police, to examine the shell casings and compare them to test-fired weapons. Freels is expected to testify concerning the comparisons next May when a trial is held on the Branch Davidians' wrongful death suit against the government.

Horiuchi is the only named individual defendant in that case. He occupied an FBI sniper position known as Sierra One on April 19, 1993. The position was in a house about 150 yards from the front of the Branch Davidians' complex.

It had been an undercover house for agents of the Bureau of Alcohol, Tobacco and Firearms who raided the Branch Davidians on Feb. 28 looking for weapons. During a gunfight that day, four agents and six Branch Davidians were killed.

During the 1994 criminal trial of a group of Branch Davidians, a Texas Ranger testified that 35 casings were found in the house: 11 spent .308-caliber cartridges and another 24 casings of .223-caliber. Ranger Ronny Griffith said he had no information that the FBI fired shots from the house and concluded that the shells came from ATF weapons. Griffith also testified that he found evidence in the house that showed people in the Branch Davidian complex had fired on the house.

Horiuchi was the FBI sniper who shot and killed Vicki Weaver, the wife of white separatist Randy Weaver during the 1992 siege at Ruby Ridge, Idaho. He has denied firing during the Waco siege.

[postnet.com/links](http://postnet.com/links) Read an archive of Waco events or view audio/visual links online.

## **"Scientists tapped for Waco simulation used to work with Justice Dept. expert "**

**by William H. Freivogel and Terry Ganey ("The St. Louis Post-Dispatch", December 3, 1999)**

The scientists nominated by the Justice Department to perform a neutral test of whether there was government gunfire at Waco are former colleagues of the Justice Department expert who thinks the test is impossible.

The Justice Department nominated experts at ERIM International of Ann Arbor, Mich., to be considered for court appointment as the "neutral expert" who would try to simulate the conditions of the final day of the government siege of the Branch Davidians' compound in 1993. ERIM is the former employer of I. William

Ginsberg, the scientist who said in a Justice Department filing last month that the conditions of the final day could not be scientifically re-created.

Michael Caddell, attorney for the Branch Davidians, said he plans to object to ERIM as a neutral expert and added that the Justice Department's choice shows it is trying to "rig the test." Caddell will suggest his own nominees for the job and will counter the government claim that the conditions of April 19, 1993, cannot be re-created.

The purpose of the simulation is to determine if flashes that appear on an infrared tape of the government assault are gunfire from government agents, as the Branch Davidians claim. The Justice Department says no government agent fired at the Branch Davidians during the final assault, which ended in a fire that killed about 80 members of the sect.

Stephen R. Stewart, one of the three ERIM scientists nominated by the Justice Department, said in an interview Wednesday that he had worked with Ginsberg when Ginsberg worked at ERIM in the late 1980s and early 1990s. Ginsberg now works at a Department of Energy facility in Las Vegas.

Stewart said he didn't know if Ginsberg had suggested ERIM's nomination. "All I know is that we were nominated as impartial experts," he said, "and if we are selected we would apply an impartial scientific judgment. I don't even know that tests are going to be conducted."

Stewart said he thought ERIM had been nominated by the Justice Department because of its expertise on forward looking infrared, or FLIR, technology, which was used by a surveillance plane that circled above the Branch Davidians' complex. "Our organization wrote the handbook on infrared technology," he said. "It's an eight-volume reference book."

The Justice Department said it had no additional comment.

U.S. District Judge Walter S. Smith Jr. of Waco will decide who will perform the neutral test of what gunfire looks like on FLIR tape. Smith ordered the test last month at the request of Waco special counsel John C. Danforth.

## **"The Death of Trust"**

**by William H. Freivogel and Terry Ganey ("The St. Louis Post-Dispatch", December 1, 1999)**

The toll of the Waco tragedy continues to mount. Polls show that most Americans now believe one of the basic tenets of the right-wing conspiracy theory: that the FBI lied about the course of events.

It is not a great leap to wonder next: What is our government covering up?

The Department of Justice spreads this plague of distrust by using every legal roadblock it can find, no matter how lengthy or convoluted, to fight the wrongful death suit filed by family members of the approximately 80 Branch Davidians who perished in their fiery compound on April 19, 1993.

The latest move in this slow torturing of American confidence came last week, when the department balked at the request of special counsel John C. Danforth to re-create the conditions of the last day of the 51-day government siege in the hope of determining whether flashes visible on an infrared tape of the assault are gunfire directed at the complex by government agents. The FBI has claimed it did not fire shots.

Marie L. Hagen, the lead attorney defending the government against the wrongful death suit, indicated that the camera that shot the film from an FBI plane, as well as wind and soil conditions, could not be re-created closely

enough to render valuable information. A scientist familiar with this technology told the Post-Dispatch these contentions were doubtful.

But they come as no surprise.

Documents have been stamped "privileged" in rapid fire, blocking their disclosure. The federal judge trying the wrongful death case, Walter S. Smith Jr., of Waco, was first said to be hostile to the Davidians' case, but last summer he ordered the evidence being held by the Texas Rangers placed in the custody of his court -- not exactly a ringing endorsement of the government's conduct.

Ms. Hagen was furious when Assistant U.S. Attorney William W. Johnston allowed documentary filmmaker Mike McNulty to examine Waco evidence. Mr. McNulty found pyrotechnic tear gas equipment that the government had denied using for six years after federal prosecutors in Texas had learned of its use.

In her effort to win the wrongful death suit, Ms. Hagen is losing a much larger battle, playing right into the hand of the anti-government conspiracy crowd. The government must stop the legal gamesmanship and cooperate fully and swiftly with Mr. Danforth's investigation.

## **"Ever-Burning Fires of Waco"**

**by James Bovard ("Washington Times", November 28, 1999)**

When news leaked out in August that the Feds knowingly suppressed information about using pyrotechnics that might have started fires that killed scores of women and children, Attorney General Janet Reno announced: "I am very, very upset. I don't think it's very good for my credibility." Miss Reno played the victim, lashing out at the FBI for supposedly withholding key information from her. But Miss Reno bears responsibility for whatever she did not find out since she orchestrated the initial Justice Department investigation to whitewash both herself and the FBI.

Since August, incriminating new information has come out practically every week about federal actions during and after the 1993 siege of the Branch Davidians that left 80 civilians dead.

The US military was far more involved at Waco than previously admitted. Former CIA officer Gene Cullin declared in late August that Delta Force commandos were "present, up front and close" in tanks the final day's action at Waco. Delta members bragged to him of their role when he subsequently served with them in Europe. James B. Grancis Jr., chairman of the Texas Department of Public Safety, confirmed there is evidence that the Delta Force participated in the final assault against the Davidians.

Did the US military test new weapons on American citizens during the standoff? According to the Dallas Morning News, "The military has estimated that at least 6,000 pages of its documents are classified, and CIA, FBI, Treasury, ATF [Alcohol, Tobacco and Firearms] and Justice Department officials have indicated that their agencies have a number of secret documents relating to the stand-off." In September, the Texas Department of Public Safety blocked the release of a report listing all the evidence it collected after the fire because the information contained military secrets.

In early October, the FBI turned over thousands of key documents to congressional investigators - information previously withheld because it had supposedly been mislaid in boxes kept at Quantico home base of the FBI's Hostage Rescue Team. During the 51-day siege, FBI spokesmen bitterly complained that none of the Branch Davidians would leave their compound. But according to these documents, in at least seven instances FBI agents threw flash-bang hand grenades at people who had left their residence, effectively driving them back into the building. FBI agents at Waco asked headquarters permission to shoot Branch Davidians who were leaving the building - regardless of whether they posed a direct threat to federal agents.

Infrared footage from an FBI plane circling 9,000 feet above the Davidians' home on the final day reveals that federal agents fired machine guns at or into the back of the building - both before and just after the fire broke out. Additional newly released infrared footage, featured in the newly released movie, "Waco: A New Revelation," shows two figures exiting from the back of a tank and ten spraying the Davidians' residence with automatic-weapons fire.

One FBI agent stated in an after-action report that he heard gunfire from the sniper post occupied by Lon

Horiuchi, the same FBI agent who killed Vicki Weaver as she held her baby daughter in the cabin door of her Idaho home in 1992. Mr. Clinton declaimed on the day after the fire: "I do not think that the US government is responsible for the fact that a bunch of religious fanatics decided to kill themselves." It now appears that the FBI tried to keep the Davidians inside while its tanks crushed in the walls and collapsed the roofs - long after the air inside was nearly unbreathable because of a massive six-hour attack with CS gas.

The FBI deceived Congress and a federal judge by withholding information that it had six closed-circuit television cameras monitoring the Davidians' home throughout the siege. The resulting films may contain information to resolve the major issues of Waco. Incredibly, the FBI claims none of the cameras contained tape. Lawyers for surviving Branch Davidians were giving massively doctored infrared FBI tape of the final day's assault. The tape has large gaps and was spliced numerous times, evoking memories of President Nixon's secretary, Rosemary Woods.

In September, Janet Reno personally chose John Danforth to investigate the conduct of herself, the Justice Department and the FBI. Mr. Danforth promptly did the Feds a great favor by announcing that he would investigate only the final day's action - effectively giving the ATF a free pass. Yet new evidence uncovered by investigator David Hardy through freedom-of-information requests disintegrates the ATF's pretext for assaulting the Davidians' home - that David Koresh could not be apprehended outside the compound. Nine days before the Feb. 28 raid. "ATF agents went over and asked David Koresh to go shooting. He agreed. In fact, he provided the ammunition. And the agents handed him their guns." We have likely seen only the tip of the iceberg of revelations of federal misconduct at Waco. The American people and Congress need to turn up the heat on the Clinton administration so that the truth will finally come out.

James Bovard is the author of "Freedom in Chains: The Rise of the State and the Demise of the Citizen" (St. Martins, 1999). This piece is adopted from an article in the December American Spectator.

## **"Government played politics, sacrificed truth after Waco, prosecutor says"**

**by William H. Freivogel and Terry Ganey ("The St. Louis Post-Dispatch", November 28, 1999)**

WACO, TEXAS - The federal prosecutor who worked on the Waco case longer than any other government lawyer has told the special counsel's office about a "pattern of nonaccountability" in the Justice Department's handling of the investigation.

Assistant U.S. Attorney William W. Johnston spent five hours recently answering questions from special counsel John C. Danforth and his deputy, Edward L. Dowd Jr. Johnston is a key witness who could help answer one of the four "dark questions" Danforth is investigating: Did the government cover up wrongdoing at Waco?

In an interview with the Post-Dispatch, Johnston said he saw the Justice Department:

- \* Refuse to prosecute government agents who made false statements about the initial raid on the Branch Davidians by the Bureau of Alcohol, Tobacco and Firearms.
- \* Deny using pyrotechnic tear gas for six years after federal prosecutors in Texas had learned of its use.
- \* Classify him a mutineer for releasing information about the use of the pyrotechnic gas.
- \* Send subtle -- and not so subtle -- messages threatening to pin blame on him for the delay in the release of information.
- \* Stamp key Waco documents "privileged" to block their disclosure.

\* Obstruct his attempt to warn Attorney General Janet Reno that she was not being told the whole truth about Waco.

Viewed darkly, these are elements of a cover-up. Viewed more generously, as Johnston tends to, they are merely evidence of knee-jerk legal gamesmanship that ill serves the department and the public.

Johnston says the Waco case has left him jaded and cynical about the government. U.S. District Judge Walter S. Smith Jr., a father-figure to Johnston, is said by friends to have undergone a similar metamorphosis.

Viewed as hostile to the Branch Davidians during the 1994 criminal trial he presided over, Smith has recently issued tough orders requiring the government to turn over evidence in the civil trial he will hear next spring.

"He (Judge Smith) believes he's not been told the truth about what happened and that the public has not been told what happened," says Michael Caddell, a Houston lawyer representing the Branch Davidians.

Still, Johnston says, he told Dowd "it would floor me" if it turned out that government agents fired shots at the Branch Davidians or contributed to the fire that enveloped the complex, leaving about 80 people dead.

"It would be the best-kept secret in law enforcement," he says. But he adds, "Anything is possible in this case. This case was completely bizarre from the beginning."

"Nothing good will come of this"

Johnston is tall and slim at 40. A maverick, his friends say. He says that comes from his father, Wilson Johnston, who was an assistant to Dallas District Attorney Henry Wade.

In the living room of his Waco home, near a picture of his family with President George Bush, Johnston removes two heavy slugs from the display case of the coffee table -- slugs from a bomb that just missed his father during the North Africa campaign during World War II. These slugs remind him daily of the values his father stood for.

"He'd tell his boss, 'You just can't do that, Henry,'" he says.

Johnston's Waco account is an authentically Texas tale. Sitting around a campfire with courthouse friends, coyotes howling in the distance, he touches on rivalries between Texas and Washington and between his U.S. attorney's office in Waco and its parent office in San Antonio.

Johnston opened the small Waco U.S. attorney's office in 1987, a few years after graduating from Baylor Law School. The ATF walked in the front door five years later to ask for help preparing its warrant to search the Branch Davidian complex for illegal guns.

On the morning of the ATF raid, Feb. 28, 1993, Johnston was at the command center at Texas State Technical Institute, a few miles from the complex.

"I heard a radio in a car say something about gunfire," he says. "Then I heard people say, 'We've got maybe five dead already.' I remember thinking nothing good will come of this."

Certainly not for Johnston, who has come under attack for his handling of the raid and the events that followed.

Two myths have been propagated about the ATF raid, Johnston says. One is that ATF agents in National Guard helicopters fired on the complex. The physical evidence establishes beyond doubt that they did not, he says.

The other myth is that the search warrant was faulty and included inflammatory information, such as allegations of child abuse by Branch Davidian leader David Koresh. Judge Smith found the warrant was legal during the 1994 criminal trial against the Branch Davidian survivors, but critics still contend the government overreached with the warrant that Johnston helped prepare and started all the trouble.

Two other serious allegations have been made against Johnston in connection with the ATF raid. First, that Johnston had insisted on the so-called "dynamic entry," under which a squad of about 70 ATF agents tried to force its way into the complex. The other allegation is that Johnston ordered the ATF to stop its review of ATF gunfire for fear that it would uncover evidence unfavorable to the government that could be used to defend the Branch Davidians.

Johnston denied both allegations in testimony to Congress in 1995. He was not involved in planning the details of the raid, he says. And he ordered the ATF shooting review stopped because he didn't want the agency investigating itself. Instead, he brought in the Texas Rangers.

It's unclear whether Danforth's investigation will probe either of these two issues. When Danforth was appointed Sept. 9, he said he was going to investigate whether government agents fired shots or killed people at the end of the siege April 19, 1993. He is also investigating whether the government covered up wrongdoing.

### **Investigating a leak**

The press had been tipped off to the ATF raid, and the Branch Davidians learned about it from a photographer. This leak, with its disastrous consequence -- the deaths of four agents and six Branch Davidians -- led to two investigations that left Johnston disillusioned.

In the first, Johnston recommended the prosecution of ATF field commanders Phil Chojnacki and Chuck Sarabyn on charges of filing false statements about the raid. Johnston thought the two lied when they said they had not known before the raid that the element of surprise has been lost. An undercover agent said he had warned them.

"About 40 agents heard Chuck Sarabyn say, 'Hurry up. We've got to go. They know we're coming,' Johnston said. The two were not prosecuted.

The other investigation targeted two of Johnston's best friends, Deputy U.S. Marshals Parnell and Mike McNamara, as the sources of the leak. The McNamaras denied the allegation and passed lie detector tests. But the Justice Department never punished the marshals' employees who falsely accused them.

"A number of things have made me less trustful," Johnston says. "Is this the way to treat government employees?"

During the 51-day siege of the Branch Davidian complex, Johnston had a falling out with Ronald Ederer, the U.S. attorney in San Antonio who had come to Waco to oversee the case. On March 23, Johnston wrote to Reno about his boss's "poor judgment."

Johnston was most disturbed that Ederer had allowed the FBI to move cars that contained bullet holes that would have provided important trajectory evidence in the prosecution of those who killed an ATF agent who was hiding behind the car.

Reno sent a top Justice Department official to Waco to cool things down. The investigation was turned over to Ray Jahn, an assistant U.S. attorney in San Antonio, who worked with Johnston during the rest of the siege and the trial of the Branch Davidians. Assisting them was Jahn's wife, LeRoy. They won manslaughter convictions against the Branch Davidians, but the jury acquitted those charged with murder.

### **Pyrotechnic gas**

In preparing for the trial, the Jahns and Johnston interviewed government agents who were involved in the April 19 assault. Some FBI agents mentioned the use of the pyrotechnic tear gas that was shot at a concrete bunker 50 yards from the complex four hours before the fire broke out. FBI documents indicate that Johnston and LeRoy Jahn were present when agents mentioned these devices. Somehow, it took six years for that information to get to Reno.

Johnston says he does not remember any mention of the tear gas in the interview. The Jahns declined to comment. Ray Jahn, in testimony to Congress on July 19, 1995, made no mention of the device. He testified that "the FBI did not fire a shot, other than the nonlethal ferret rounds which carried the CS gas." LeRoy Jahn sat next to Ray Jahn during his testimony.

### **The Danforth investigation**

Last year, filmmaker Michael McNulty sought Johnston's help in getting access to crime scene evidence after being rebuffed by the Texas Rangers and the higher-ups at the Justice Department.

Johnston contacted a public affairs officer in the Justice Department and says he got permission for McNulty, who found the pyrotechnic shell in the evidence.

On a Saturday morning in June, the lead lawyer defending the Justice Department in the civil suit, Marie Hagen, called Johnston at home and angrily demanded to know whether he had allowed McNulty to see the evidence.

"She ended the conversation unquenched in her anger," Johnston later recounted in a letter to Reno. "Then within a day or so, I received a letter from Marie Hagen which directed that I account for my dealings with McNulty."

Meanwhile, the Texas Rangers, alerted by McNulty, were paying new attention to the pyrotechnic device. Johnston informed U.S. Attorney Bill Blagg of San Antonio about those developments and urged that Reno be told. Weeks passed.

On Aug. 26, Johnston received a three-page fax of notes that a paralegal had taken in his presence in 1993 showing that an FBI agent had told him of the use of a "military gas round" during the April 19 assault. Johnston says he had no recollection of the statement and says the term military round would not have meant anything to him then.

But Johnston saw the fax as a shot across the bow, especially when its contents showed up in newspaper stories. In an e-mail message to Blagg, Johnston said the documents had been leaked to the press as part of a "stunt" to "blame" him for the Justice Department's delay in admitting to the pyrotechnic device. The times and dates on the faxes show that memos originated in the torts section of the Justice Department, were sent along to the office of the attorney general and then forwarded to Blagg before they were sent to Johnston.

By this time, Johnston had decided to write a letter of warning to Reno.

"I had decided this was nonsense," he says. "Either she's not telling the truth, or they are not telling her."

In the letter, Johnston said that "facts may have been kept from you . . . by components of the department." He said he was astounded by the Justice Department's denials of the pyrotechnic device. "I am in disbelief that someone in the Department did not advise you of these developments," he wrote.

Johnston called Reno's attention to the three-page fax that had been sent him. He noted that it had "privileged" written on it, and "DOJ witness do not disclose."

Johnston wrote: "It is my hypothesis that the torts branch has had these documents for years and that they decided not to make them available to the plaintiffs."

Judge Smith called Reno after Johnston wrote the letter and asked her to make sure there was no retribution. She replied that Johnston would be treated fairly. Shortly after that, the department announced that Blagg, Johnston and all of the other Texas lawyers who had worked on Waco would be taken off the case.

Hagen remains in charge of the government's defense.

Caddell, the lawyer for the Branch Davidians, says the government has not met its legal obligation under court rules to turn over documents that relate to the issues in the case.

"The idea that this is a win at any cost, legal gamesmanship, is not appropriate," Caddell says. "As officers of the court, you've got a duty that's not about whether you win or lose."

Hagen has been criticized for withholding information in another highly publicized case, a suit filed by relatives of sailors killed in an explosion on the battleship Iowa in 1989. Magistrate Judge David Perelman blamed Hagen and another lawyer for withholding Navy documents that outlined the lesson they had learned from the incident. Hagen declined to comment.

To skeptics, Justice Department lawyers have adopted legalistic tactics that make it look like they are covering something up, even when they are not, or when the information in question may not be especially important.

An example might be the pyrotechnic devices. For all the hubbub, there is still no evidence that they caused the fire.

Johnston is wary of conspiracy theories. His father prosecuted Jack Ruby but never bought the conspiracy theories that surrounded Ruby's murder of Lee Harvey Oswald, the assassin of President John F. Kennedy.

Johnston has two pieces of advice for Danforth and Dowd. First, "find people with possible knowledge to cut through the hearsay and the myths." And second, don't jump to conclusions.

"Just when you think you've figured it out, you realize you're on the edge of the tar pits," he says.

Still, Johnston says, he told Dowd "it would floor me" if it turned out that government agents fired shots at the Branch Davidians or contributed to the fire that enveloped the complex, leaving about 80 people dead.

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## **"Years After Davidian Cult Fire, Legal Battles Gather Force"**

**by Ross E. Milloy ("The New York Times", November 26, 1999)**

AUSTIN, Tex. -- Six years after David Koresh's strange ministry of God and guns ended in flames at the Branch Davidians' compound near Waco, more questions than answers continue to rise out of the ashes.

And the legal battle that has kept the case alive has gained steam in the last week, with a federal judge stepping in to settle disputes over evidence and issuing rulings that are providing new insights into the case.

Last week the Senate Judiciary Committee and the Justice Department's special counsel sparred over who should get first access to potential witnesses in two new inquiries into the destruction of the Davidians' compound. At the same time the federal government, responding to a demand by Judge Walter S. Smith of Federal District Court, completed delivery to the courthouse here of a mountain of evidence related to the 51-day standoff and fire in 1993 in which Koresh and about 80 others died.

Judge Smith is supervising a wrongful-death civil lawsuit filed against the government by the survivors of Branch Davidians who were killed in a federal weapons raid at the sect's Mount Carmel compound in February 1993 and in the subsequent fire on April 19, 1993, which started during an F.B.I. assault with tanks and tear gas. The lawsuit is to be heard in May, and Judge Smith has been moving to gather all of the evidence under his control, in part because of assertions by the United States attorney formerly handling the case that the government might be withholding data from the plaintiffs.

William Johnston, the United States attorney for the Western District of Texas who made the contentions, was removed from the case in September.

On Wednesday, Judge Smith ordered that shell casings taken from a farmhouse near the scene be turned over to a special counsel appointed by the Justice Department. The counsel's office will conduct ballistics tests that could help determine whether federal sharpshooters fired into the compound, as asserted by the plaintiffs' lawyers.

"We're never going to know the entire truth about Mount Carmel," said Michael Caddell, a lawyer for the plaintiffs. "But can we answer the question of whether or not the government fired on the Davidians? I think we can, and I think we will in the course of this lawsuit."

The Justice Department had twice resisted both the wide-ranging nature and the timetable for producing all government-held documents in the case. But Judge Smith set a deadline of Nov. 15 and signaled his displeasure with the slow pace of the government's compliance.

"The court is not unmindful that the government waits not only until the last day, but until the last minute, to respond to every order this court has issued," the judge's order said. "That practice causes the court to be suspect of the government's desire to comply with its orders."

In August, Judge Smith took possession of materials gathered by the Texas Rangers from the wreckage of the fire revealing that the F.B.I. had apparently misled government officials about the possible use of pyrotechnic tear-gas canisters on the final day of the siege.

That information, and reports that the Defense Department's Delta Force had been more heavily involved in the standoff than was previously known, led Attorney General Janet Reno to appoint John C. Danforth, a former senator from Missouri, as an independent special counsel to re-examine the government's role in the siege. The Senate Judiciary Committee has also begun its own inquiry, under a subcommittee led by Senator Arlen Specter, Republican of Pennsylvania.

Six people, including four federal officers, were killed in the initial raid by agents of the Bureau of Alcohol, Tobacco and Firearms that sparked the standoff. Fifty-one days later, Koresh and dozens of followers died as fire swept through the compound when the F.B.I., which had assumed control of the operation, used tanks to pump in tear gas in an effort to end the standoff.

In gathering material on the siege from government agencies, Judge Smith has demanded original documents, which could be important in analyzing infrared images that the plaintiffs' lawyers think are essential to their case.

More than 20 of the bodies found in the wreckage of Mount Carmel showed evidence of gunshot wounds. The F.B.I. has maintained that no government officials fired their weapons during the standoff and subsequent fire. They say that panic, fear of death by fire, or fear of capture led the Branch Davidians to kill each other.

Lawyers representing the survivors say that infrared videotape shot from a plane in the last hours of the standoff shows flashes of automatic weapon fire directed toward the compound from government positions.

"You don't see these telltale flashes any other time; you don't see them any at other location; there's no other explanation for them other than gunfire," Caddell said. "Even the government's own experts have no explanation for it."

He said the videotape would answer conclusively whether there was government gunfire.

Caddell said electronics experts hired by the plaintiffs' lawyers had found that portions of the tapes they had received from the government had been erased or altered, making access to the originals crucial to the case.

Federal officials have said the flashes were probably reflections of mud puddles or pieces of metal.

In October, Caddell challenged the government by asking Judge Smith to supervise a re-enactment of the April 19 events at a Dallas firing range to determine whether the tapes actually indicated gunfire. The Justice Department refused to cooperate in such a test, but on Nov. 5, Danforth's office, saying the issue was significant to the special investigator's mission, joined the plaintiff's lawyers in seeking a re-creation.

Last week Judge Smith sided with the plaintiffs and the special counsel's office, ordering all parties in the lawsuit to participate in the re-enactment. On Monday the government appealed the order, saying a re-creation would add "more confusion than clarity."

Court filings indicate that the materials now in the Texas court's possession include thousands of audio- and videotapes, computers and computer disks, nearly 171,000 pages of documents from the F.B.I., 588 White House documents and 37,000 pages from the Department of Defense, 7,000 of which remain classified.

The Bureau of Alcohol, Tobacco, and Firearms, which conducted the original raid to arrest Koresh on automatic-weapon violations, turned over 134 boxes of materials, 9 of which were sealed for review by the judge.

Court filings show that at least some original documents will not be made available to Judge Smith: a private contractor hired to duplicate at least 750 pages from the F.B.I. sent them by mistake to a landfill near Washington.

The contractor kept three copies of the documents, however, and at least one was forwarded to the court.

## **"Danforth's team will question two FBI agents who drove converted tank"**

**by Terry Ganey And William H. Freivogel ("The St. Louis Post-Dispatch", November 24, 1999)**

WACO, TEXAS - The two special agents were assigned to a vehicle that tore down the back side of the complex in an attempt to roust the Davidians. They may have been able to see if agents fired weapons.

Investigators for special counsel John C. Danforth are preparing to question two FBI agents who drove a converted tank during the siege on the Davidians' complex in 1993 and who may have been in a position to see if agents fired weapons.

The two are special agents James T. Walden and Gary Harris, who were assigned to a vehicle that tore down the back side of the complex in an attempt to roust the Davidians. Experts for the Davidians who have reviewed infrared tapes of the event say they can see flashes of fire around the tank.

Meanwhile, the Justice Department is balking at the simulation that Danforth proposed to test whether the flashes on the tape are images of fire. On Monday, the Justice Department will file a detailed explanation of the reasons it thinks a simulation will not be reliable, a source told the Post-Dispatch. The Justice Department will make alternative proposals that would involve different kinds of tests and a different format from the simulation that Danforth proposed and a judge ordered last week.

The simulation and preparations for the agent interviews were just two new elements in the Waco investigation, which seemed to accelerate last week.

In addition, investigators for Danforth began sifting through hundreds of thousands of bits of debris from the siege stored in cans in a warehouse in Waco.

Danforth also asked U.S. District Judge Walter S. Smith Jr. for temporary custody of 36 spent shell casings to compare them with hundreds of weapons that were in FBI agents' hands during the 51-day siege. Danforth has asked the FBI to turn over those weapons for ballistics tests.

Attorney General Janet Reno appointed former Sen. Danforth, R-Mo., on, Sept. 9, to determine whether government agents fired or started the fire that ended the siege. About 80 people died, most from the fire and some by gunshots. The government's position has been that the Davidians started the fire and that some of them killed themselves or each other.

FBI officials have said none of its agents fired weapons.

Michael A. Caddell, the lead attorney representing survivors in a wrongful death suit, said he believes Danforth's investigators will question Walden and Harris sometime after Thanksgiving.

Lawyers have agreed to let Danforth's investigation team question certain key witnesses before the plaintiff's lawyers do so.

Caddell said he plans to depose Walden and Harris in about three weeks. He said the pair have not testified in court or before Congress about what happened at the Davidians' Mount Carmel complex outside Waco.

### **"Clear a path"**

According to FBI after-action reports, Harris was the driver and Walden the commander of the converted tank that was rigged with a boom to shoot tear gas into the upper story of the complex at Mount Carmel. The tear gas was supposed to force people out. After mechanical problems knocked out that vehicle, Harris and Walden transferred to another that was not equipped with a boom to fire tear gas.

Harris drove the replacement tank to the back of the complex. The report said he and Walden were supposed to "clear a path" through the structure. Their tank began battering a back wall of the gym building.

"When it was determined that the structure was empty, the vehicle was driven through the structure from the black (back) to the white (front) side," the report said. "After moving into the room as far as was possible, Special Agent Walden reversed and removed the vehicle from the structure. As he was doing so, he observed smoke followed by flames from the kitchen area."

Caddell believes the shooting came from agents who were on the ground around the tank to prevent Davidians from attacking it. He said the after-action reports from Walden and Harris are silent on the issue of gunfire from other agents. The flashes that appear on the FBI's infrared tapes occur about the time that Harris and Walden's tank is demolishing the gym.

Richard Schwein, one of the FBI commanders at the Waco siege, said it was "inconceivable" that any agents were on the ground near the converted tank that was knocking down the gym.

"There were specific orders not to have anyone on the ground," Schwein said in an interview with the Post-Dispatch. "You don't put people under fire on the ground."

Schwein's theory is that the flashes on the tapes are from FBI agents using shotguns to fire tear gas rounds into the building. He said that five or six members of the FBI's hostage rescue team were inside each Bradley

Fighting Vehicle. He said the flashes may have come as agents inside the Bradleys fired tear gas rounds from that vehicle's firing ports.

Justice Department officials say they doubt the simulation ordered by Judge Smith on Monday would resolve the issue of fire. Marie L. Hagen, the lead Justice Department attorney defending the government in the suit, wrote Caddell last week saying the FBI's forward looking infrared (FLIR) camera that was used at Waco no longer exists.

"The FLIR system used on April 19, 1993, has been modified and upgraded at various times since 1993 and, therefore, is not identical to the system that generated the tapes at issue," Hagen wrote. "Among other things, the system was switched from log to a digital format."

### **Lawyer scoffs at government**

Department officials said late Friday that Monday's court filing will give a more detailed explanation of the problems with a simulation and make alternative proposals.

Caddell, the Davidians' lawyer, scoffed at the government objections.

"We can send a man to the moon, but we can't get a camera that's six years old?" said Caddell. "It's ridiculous."

Justice Department lawyers have resisted the simulation idea all along, though their reasons have changed. When Davidians' lawyers first proposed a test, the Justice Department and the FBI said the specifications of the infrared camera had to remain secret for national security reasons.

Then, the FBI proposed a separate private simulation for Danforth's office alone.

Judge Smith approved an independent simulation, allowing the government and the Davidians' lawyers the opportunity to suggest how the test could be conducted.

Those who know Judge Smith doubt that he will be receptive to the government's objections. The judge has become increasingly skeptical of the government's conduct, insisting in recent months that the Justice Department turn over all its evidence to the court. Late last week, investigators for Danforth's office visited a storage shed in Waco where tons of debris from the siege has been kept in large storage boxes. Wearing medical masks and gloves, they picked through the material.

Assistant U.S. Attorney William Johnston, who prosecuted Davidians in 1995, referred to the material as "junk evidence" which was not used during the trial and has never been carefully examined. The debris includes hundreds of thousands of rounds of ammunition that exploded during the fire.

### **What happened last week**

#### Monday

\* The FBI confirms that special counsel John C. Danforth wants the FBI to turn over several hundred guns it had at Waco. The St. Louis County police may perform the ballistics tests.

\* U.S. District Judge Walter S. Smith Jr. orders a court-supervised simulation of the last day at Waco to determine whether flashes on infrared tape are fire from government agents.

#### Tuesday

\* Danforth seeks an independent study of spent rifle shell casings found at Waco to determine whose Davidians fired them.

\* Justice Department officials, who ask not to be named, begin questioning whether the simulation of the infrared tapes will be reliable.

#### Wednesday through Friday

\* About a dozen investigators, including postal inspectors working for Danforth, seize buckets full of evidence from the crime scene.

#### Thursday

\* Justice Department lawyers defending the government against the Davidians' wrongful suit raise questions about the ability to recreate the camera that was used for the infrared tapes at Waco.

## "Waco Investigator Gets Shell Casings"

("Associated Press", November 24, 1999)

WACO, Texas (AP) - A federal judge on Wednesday ordered the FBI to turn over a dozen bullet shell casings to the special counsel re-investigating the Branch-Davidian siege, but did not respond to a request for the FBI guns.

U.S. District Judge Walter S. Smith of Waco said the casings must be turned over to special counsel John Danforth for independent testing, along with crime scene photographs taken by the Texas Rangers and FBI, and diaries, notes and other paperwork.

The FBI has long denied that its agents fired any shots during the seven-week standoff, which ended when the Davidians' compound was destroyed in a fiery inferno on April 19, 1993.

Cult leader David Koresh and some 80 followers died, some from the fire, others from gunshot wounds.

While the FBI and Justice Department have always maintained the Branch Davidians killed themselves, independent filmmakers, lawyers for survivors suing the government, and others skeptical of the claim contend government agents fired at the compound.

The judge's order did not comment on the request from Danforth, the former Republican U.S. senator from Missouri, that the FBI turn over the firearms its on-scene personnel carried.

## "US Fights fire Tests in Waco Case - Study that Davidians seek is unreliable, lawyers say"

by Lee Hancock ("The Dallas Morning News", November 23, 1999)

Government lawyers argued Monday that field tests can't re-create the last day of the Davidians siege and instead proposed that a judge commission studies of what fire might look like - or if would show up at all - on the infrared camera the FBI used that day.

The kind of re-creation lawyers representing Davidians have proposed would be unreliable and inadmissible in federal court proceedings, Justice Department lawyers argued in a pleading filed Monday. The federal judge overseeing the case and the special counsel investigating the siege, John Danforth, have already endorsed it.

"In short, it would produce more confusion than clarity," the 10-page Justice Department pleading stated. "In contrast, the study of the spectral and temporal characteristics of muzzle blasts and accompanying estration of FLIR [infrared] technology would . . . help to resolve the issue with finality."

Last week, U.S. District Judge Walter Smith ordered infrared field tests at the request of Mr. Danforth's office. The special counsel sought court intervention Nov. 5, after FBI officials offered a private "accurate re-creation" for Mr. Danforth's investigators even as Justice Department lawyers scoffed at proposals by the Davidians' lawyers for a joint public test.

The Davidians' lawsuit alleges that repeated bursts of white light captured by an airborne FBI infrared camera April 19, 1993, were muzzle blasts of governments fired at the group's compound.

In late October, lawyers for the sect challenged the government to a high-stakes field test, proposing use of an airborne camera similar to that used by the FBI that day to record test shots from weapons like those carried by government agents and compound occupants.

The FBI says none of its agents fired this during the 51-day standoff.

In Monday's pleading, government lawyers argued that it would be impossible to replicate environmental conditions or the equipment used by the government on the last day of the standoff.

The FBI has upgraded its infrared camera in the six years since the standoff, and the equipment is a one-of-a-kind device whose capabilities are classified under national security regulations, government lawyers wrote.

Restoring that camera to its 1993 condition would be "impracticable and cost prohibitive," government lawyers wrote.

At best, scientific testing could determine only "what fire should look like" or whether it could be captured by a camera deployed under the conditions that occurred in Waco on April 19, the government pleading argued.

Mike Caddell, lead lawyer for the Davidians, dismissed the pleading as a "weak" attempt to undermine what other experts have said could be a definitive and scientifically valid test.

He said he believes that the FBI could easily restore its camera to its 1993 condition, a process he said would be akin to "changing from a DVD recorder to a VCR."

"I haven't talked to anybody who said you can't re-create this.

Soil-moisture conditions are not going to affect the detection of muzzle blasts from an M-16," he said. "The estration is not to determine what those flashes are. It is simply to determine whether those flashes could be fire."

The government pleading came the same day that Justice Department lawyers acknowledged the discovery of more undisclosed evidence from the 1993 incident in the FBI's Washington headquarters.

In a separate federal court filing Monday, the department said that an FBI technician conducting an ammunition inventory Friday found 20 envelopes with bullets test-fired from Davidians recovered from the compound.

It came four days after lawyers assured Judge Smith that they had surrendered everything in the government's possession relating to the Waco tragedy.

"It was inadvertent. These were in a place that they simply hadn't looked before," a Justice Department official said.

The envelopes were delivered Monday to the federal court in Waco. The Justice Department filed a brief pleading announcing the turnover, along with an FBI official's sworn statement that the evidence "possibly" had been overlooked after being inadvertently misfiled during renovation of the FBI laboratory.

James J. Cadigan, chief of the lab's firearms unit, said in a sworn statement that 18 of the envelopes were discovered in an ammunition storage box, and that prompted a search that turned up the other two envelopes.

The Justice Department official said the discovery had not prompted renewed searches for evidence.

But the chairman of the Texas Public Safety Commission said Monday that Texas officials are increasingly concerned that a key piece of evidence may still be at the FBI lab, following a fruitless two-day search of tons of evidence in Waco.

More than a dozen Texas Rangers, congressional investigators and officials with Mr. Danforth's office spent two days combing through the evidence last week for a missing pyrotechnic tear gas grenade fired by the FBI.

The search turned up 24 items that may have evidentiary value, including parts of a MAC-10 pistol, a .38-caliber revolver and a number of what appeared to be burned remnants of government listening devices placed in the compound during the siege, said James B. Francis Jr. chairman of the Department of Public Safety board.

"But we did not find that canister we were looking for," he said. "We don't know where it is. It may be in the FBI's lab. That's the only other place that we know it could be. Nobody else has had access to that except FBI agents over the years."

Texas Rangers have been trying to find the missing projectile since June, when Mr. Francis ordered a search after learning that it was not among the collection of evidence held in the state agency's Austin evidence lockers.

The Rangers had kept key evidence since they were asked to help investigate the case shortly after it began with a fight between government agents and members of the Waco sect. Four agents from the federal Bureau of Alcohol, Tobacco and Firearms were killed when the battle broke out as they tried to search the Davidians' compound and arrest leader David Koresh on weapons charges.

The FBI tried to end a standoff with the sect 51 days later by ramming the compound with tanks and spraying in tear gas. Six hours after the assault began, the compound burned with Mr. Koresh and more than 80 followers inside.

Arson investigators ruled that the fire was deliberately set by compound occupants, and FBI agents insisted for years that they had used nothing that might have sparked a fire that day.

But after the Rangers' efforts to locate and identify the pyrotechnic-tear-gas projectile and other questioned evidence became public, a former FBI official admitted in August that the bureau's agents had fired at least two military tear-gas grenades capable of igniting fires during their final tear gas assault.

As the Rangers began their inquiry, they asked Judge Smith to take control of the evidence still in their custody. Judge Smith responded in early August with a sweeping order for the turnover of everything in the federal government's possession in any way relating to the siege.

Government lawyers initially tried to fight the order, agreeing to comply only after the judge threatened to hold

them in contempt. They then repeatedly sought delays, filing pleadings stating the final shipments of evidence only after the judge again threatened contempt proceedings.

## **"Justice Dept. says re-creating Waco siege would be invalid, confusing simulation"**

**by William H. Freivogel and Terry Ganey ("The St. Louis Post-Dispatch", November 23, 1999)**

The Justice Department said Monday that John C. Danforth's proposed re-creation of the conditions of the last day of the government siege at Waco would be unreliable, confusing and inadmissible in court. But the government said it would agree to other scientific tests to see if fire shows up on infrared tape.

The Justice Department was responding to a Nov. 15 order by U.S. District Judge Walter S. Smith Jr., who approved Danforth's request for a court-supervised re-creation of conditions of the government assault on the Davidians' complex on April 19, 1993. Danforth wants to test the Davidians' claim that flashes visible on an infrared tape of the assault are fire directed at the complex by government agents. About 80 Davidians died after a fire engulfed the complex.

Danforth had no response to the government's objections. Edward L. Allard, an infrared expert for the Davidians, said the Justice Department was turning a simple test into a complicated event.

The Justice Department said the re-creation would not be scientifically valid because it could not re-create the conditions of the last day of the siege.

It could not duplicate minute temperature fluctuations, the speed and directional shifts of the wind, the amount of moisture in the soil and the debris generated by the collapse of the complex's gymnasium.

Nor could the court re-create the forward looking infrared equipment used by the FBI plane that circled over the complex, the department said in a brief signed by Marie L. Hagen, the lead attorney defending the government against a wrongful death suit filed by the Davidians in Smith's court.

The equipment used at Waco was top secret and has been upgraded to pick up images it would not have detected in 1993, Hagen said. No practical way exists to re-create this one-of-a-kind equipment as it was in 1993, she said.

Because of the impossibility of re-creating the conditions, the Justice Department said that any findings would be inadmissible in court under a 1993 Supreme Court decision aimed at excluding junk science from evidence. The re-creation "would produce more confusion than clarity," Hagen wrote.

The government said it would support other scientific tests, however. It said that a neutral scientist could design a test of what fire looks like through infrared equipment like that used by the FBI at Waco.

The government proposed using a spectrometer and radiometer to measure various characteristics of the radiation from a muzzle blast. That could enable experts to assess if the flashes on the 1993 tape are muzzle flashes from Davidians.

The government conceded that it is also feasible to design a test to see if an airborne infrared system could detect fire. Hagen said the FBI's current infrared equipment would not provide a more reliable result than any other infrared equipment because the FBI system has been altered. Hagen asked that Judge Smith let the neutral expert he appoints decide whether to use the upgraded FBI system or another infrared system.

Hagen said it is also possible to design a test for other possible sources of the flashes on the 1993 tapes. One complication, she said, is that no one knows the composition of the gym that was being destroyed by a government armored vehicle in the vicinity of the flashes.

The government brief relied upon the technical advice of I. William Ginsberg, chief scientist at the Energy Department's Remote Sensing Laboratory in Nevada.

Government lawyers said that if the test goes forward using FBI equipment, safeguards must be used to prevent the disclosure of the secrets of the Nightstalker, the super sleuth FBI surveillance airplane.

Roger A. Nisley, special agent in charge of the FBI's critical incident response group, said information about the Nightstalker's specifications and infrared equipment are classified. He noted that the plane is used on government jobs in both the United States and foreign countries.

"Public dissemination of information which describes in detail the Nightstalker aircraft or the FLIR equipment

would permit easy identification by foreign governments and others seeking to avoid detection and could irreparably compromise the usefulness of this valuable covert surveillance technique," Nisley said. He said the government has kept even the make and model of the Nightstalker secret because a limited number of similar aircraft are in the United States and would not disclose the altitude at which the plane flew at Waco. Nisley added that the equipment used on the plane is made specifically for the FBI and is not commercially available. The agreement between the FBI and the manufacturer is classified national security information, he said.

Informed sources say the Nightstalker is a twin-engine turboprop. It is flown by a pilot and a co-pilot while a third person operates the infrared equipment. At Waco, the plane circled above the complex at about 9,000 feet, sources say.

Allard, the Branch Davidians' infrared expert, said the government was "hiding behind a cloak of secrecy." Allard said he believed the United States had used British infrared equipment. "All you have to do is go and get an equivalent American FLIR that can do the same."

Allard said it wasn't necessary to duplicate exactly the temperature of the ground or to have tanks present or to re-create the fire. The field test conditions are a secondary effect, he said. "Suppose the ground temperature on the day of the event was 85 degrees. Suppose we do a test when it's 75 degrees. The FLIR will still see a difference in radiation. A bright signature, a FLIR will detect that. The issue is if the FLIR is detecting a bright flash, a thermal flash that fingerprints a weapon. What we are trying to do is to show the fire on the Waco FLIR tape is fire. All the other things are nonsense."

## "Government Proposes Waco Infrared Test"

by Michelle Mittelstadt ("Associated Press", November 23, 1999)

WASHINGTON (AP) - In lieu of a gunfire-and-videotape simulation proposed by survivors of the 1993 Waco siege, the government is suggesting a test of its own to put to rest a nagging question: Did federal agents fire any shots at the Branch Davidians?

That question has become a central focus for the special counsel re-investigating the standoff and figures prominently in the wrongful-death lawsuit filed against the government by survivors and relatives of those who died on April 19, 1993.

Federal officials insist that no shots were fired by government forces that day, when the seven-week siege near Waco, Texas, ended in a fiery inferno. Davidian leader David Koresh and some 80 followers perished during the blaze, some from the fire, others from gunshot wounds. The government says the Davidians died by their own hand.

The plaintiffs, however, contend that rapid bursts of light on infrared surveillance tapes shot by an FBI plane represent machine-gun fire by federal agents into the Davidians' compound.

To prove their theory, the plaintiffs proposed to stage a demonstration in which guns like those carried by federal agents and the Davidians themselves would be fired while an infrared camera similar to the FBI's would record the action from a plane.

The Justice Department rejected the plaintiffs' demonstration, later offering to do a private test for special counsel John Danforth.

Troubled by the dueling proposals, Danforth this month asked the federal judge presiding over the wrongful-death case to supervise an impartial test.

U.S. District Judge Walter Smith, who has set the trial's start for mid-May, agreed and asked the government, plaintiffs and Danforth to agree on a protocol under which an infrared demonstration would be conducted. The Justice Department, in a 10-page filing with the court on Monday, suggested that the full-scale simulation proposed by the plaintiffs could not replicate the sun, wind, temperature, heat source and soil moisture conditions present that day.

"No attempt at 'recreation' of the events would meet the test of reliability because it could not replicate and take into account all of the operative facts," the Justice lawyers wrote. "In short, it would produce more confusion than clarity."

Instead, they proposed a test that would determine whether gunfire can be detected at specified ranges by the



Forward Looking Infrared technology deployed at Waco. And they suggested that the testing protocol agreed to by the judge and the other parties examine other "possible sources for the flashes that appear on the FBI FLIR tape."

The plaintiffs' lead counsel rejected the government's offer as a "shell game."

"If you read between the lines, what they want to do would not involve the original camera and would not involve the original aircraft - both of which they have," Houston lawyer Michael Caddell said. "They claim that a more reliable test than using the same camera and the same airplane is using two different pieces of equipment? That's the silliest thing that I've ever heard of."

The government says details of the infrared camera and FBI Nightstalker airplane, which are "often used in foreign counterintelligence investigations," must remain classified. And, the Justice lawyers said, the FLIR camera used at Waco has been "modified and upgraded significantly" since 1993.

## **"U.S., Waco Plaintiffs Argue Over Gun Tests"**

("Associated Press", November 23, 1999)

Countering Branch Davidian survivors' offer of a gunfire-and-videotape simulation, the government proposed its own test yesterday to determine whether federal agents fired gunshots on the final day of the 1993 siege.

The question of government gunfire is a key facet of the wrongful-death lawsuit filed against the government by survivors and relatives of those who died during the standoff--and has become a focus for the special counsel reinvestigating the deaths.

Federal officials say that no shots were fired by government forces on April 19, 1993, when the 51-day siege near Waco, Tex., ended in a deadly fire. Davidian leader David Koresh and some 80 followers perished during the blaze, some from the fire, others from gunshot wounds. The government says the Davidians died by their own hand.

The plaintiffs, however, contend that information collected by the FBI itself--aerial infrared surveillance footage--offers proof that federal agents fired into the Davidians' compound on the final day.

Arguing that rapid bursts of light on the infrared tapes represent machine-gun fire, they proposed to stage a demonstration in which guns like those carried by federal agents and the Davidians would be fired while an infrared camera similar to the FBI's would record the action from a plane.

The Justice Department rejected the proposal, offering to do a private test for the special counsel investigating Waco.

Special counsel John Danforth this month asked the federal judge presiding over the wrongful-death case to supervise an impartial demonstration. U.S. District Judge Walter Smith Jr. asked the government, plaintiffs and Danforth to agree on how an infrared demonstration would be conducted.

The Justice Department, in a 10-page filing with the court yesterday, said that the full-scale simulation proposed by the plaintiffs could not replicate the sun, wind, temperature, heat source and soil moisture conditions present that day and "would produce more confusion than clarity."

Instead, they proposed a test that would determine whether gunfire can be detected by the Forward Looking Infrared (FLIR) technology deployed at Waco at specified ranges. And they suggested that the testing protocol agreed to by the judge and the other parties examine other "possible sources for the flashes that appear on the FBI FLIR tape."

The plaintiffs' lead counsel rejected the government's offer as a "shell game. . . . They claim that a more reliable test than using the same camera and the same airplane is using two different pieces of equipment? That's the silliest thing that I've ever heard of," said Houston lawyer Michael Caddell.

The government says details of the infrared camera and FBI Nightstalker airplane, which are "often used in foreign counterintelligence investigations," must remain classified. And, the Justice lawyers said, the FLIR camera used at Waco has been "modified and upgraded significantly" since 1993.

## **"Waco reenactment would be impractical, U.S. says"**

(**"Reuters", November 22, 1999**)

WASHINGTON, Nov 22 (Reuters) - The U.S. Justice Department told a federal judge on Monday it would be impractical and scientifically invalid to try to reenact the final day of the 1993 siege on the Branch Davidian compound in Waco, Texas.

Instead, the Justice Department urged that a court-appointed neutral expert be charged with developing a protocol for determining whether gunfire can be seen by the FBI's infrared technology and what it might look like.

Attorneys for the survivors have asked U.S. District Judge Walter Smith in Waco to order the recreation to help determine whether any FBI agents fired at Branch Davidians inside the compound on April 19, 1993, the final day of the siege.

They have argued that flashes of light seen on tapes taken that day with the FBI's infrared technology were gunfire, but the FBI has said the flashes came from some other source.

The FBI and the Justice Department have maintained that no FBI agents fired any shots that day. After the FBI assault on the compound, the buildings went up in flames, killing cult leader David Koresh and about 80 followers.

"We do not believe that a more general effort to 'recreate' the events of April 19, 1993 is necessary ... nor practicable," the Justice Department said in an 11-page document filed with the judge.

The department said any reenactment would not be scientifically valid or useful because the specific conditions cannot be duplicated with sufficient reliability.

It said the FBI's infrared technology has been upgraded over the past six years, and that it would be "impracticable and cost-prohibitive" to reconstruct the system used in 1993.

"It is not practicable to recreate the conditions that existed at the Branch Davidian compound because of the complexity of the scene," the Justice Department said.

The department said the expert could design a protocol for scientific study of whether gunfire can be observed by the technology. If determined to be scientifically feasible, a "demonstrative operational test" then could be done, it said.

### **Waco, FBI and the Branch Davidians: Updates**

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