

Trial Set in Suit Over Davidians' Fiery End

By Richard Lei

July 14, 1999

More than six years after the fiery deaths of 76 Branch Davidians at Waco, Texas, a federal judge has cleared the way for a civil trial to determine whether the FBI was negligent in its tank and tear gas assault on the apocalyptic sect headed by self-proclaimed messiah David Koresh.

The long-awaited order from U.S. District Judge Walter S. Smith Jr. of Waco reopens several questions that the government insisted were settled in various congressional hearings and voluminous official reports. While the judge threw out many of the claims in the suit, lawyers representing families of the dead Davidians persuaded him not to dismiss allegations that the FBI used "grossly excessive" force and showed a "reckless disregard for life" on April 19, 1993, when a 51-day standoff ended.

The \$100 million suit alleges that the FBI negligently contributed to the death toll by trapping the victims in the sect's compound, by helping to spark the inferno and by blocking firetrucks from the scene. The judge also refused to dismiss claims of excessive force against the Bureau of Alcohol, Tobacco and Firearms, which conducted the initial raid on Koresh's heavily armed followers on Feb. 28, 1993. Four of its agents died in a shootout with the Davidians.

Smith said that he would decide most of the issues at trial himself but that the allegations involving one FBI sniper's role must be decided by a jury. He set a trial date of Oct. 18.

"We were overjoyed and excited, and quite surprised by Judge Smith's opinion. All of our core issues survived," said Michael A. Caddell of Houston, one of the lawyers representing more than 200 Davidian relatives waging the wrongful-death action. "I looked at that fire on the final day and said, 'This is not right.' That's what the case is about."

The lawyers had fought hard to get Smith removed from the case for alleged bias. In a 1994 criminal trial, he sentenced several Davidians to long prison terms despite a jury's finding that the sect members essentially acted in self-defense against a massive show of federal force. "I just don't hold out a lot of hope if this case is in Smith's hands that we'll get fair treatment," said Clive Doyle, a Koresh follower who escaped from the fire and was cleared of criminal charges.

"He's been prejudiced since day one."

Government lawyers have not decided whether to appeal, but Justice Department spokesman Myron Marlin said this week, "We're pleased that the bulk of the claims have been dismissed, and we believe the remaining claims will be resolved favorably as well."

The judge's 87-page order, filed July 1, applies to nine consolidated lawsuits. Smith rejected claims that government agents conspired to deprive the Branch Davidians of religious freedom and other civil rights and said there was no evidence the government deliberately planned to set the compound ablaze.

He also threw out as "outrageous" a claim that government agents planted a bomb on top of a concrete bunker where many of the 55 Davidian women and children were found dead.

The bomb allegations were raised primarily by Ramsey Clark, a former U.S. attorney general who represented several family members.

The judge pared the number of plaintiffs in the case to 84, giving standing only to direct heirs or estates. He also granted a government motion to dismiss 40 federal and state officials originally named as defendants, including Attorney General Janet Reno, former FBI Director William S. Sessions and former Texas Gov. Ann Richards.

Only FBI sniper Lon T. Horiuchi remains as a named defendant. As a member of the FBI's elite anti-terrorist Hostage Rescue Team, Horiuchi played a key role in the April 19 siege. But he is more widely known as the shooter in the FBI's ill-fated, controversial assault against white separatist Randy Weaver in Ruby Ridge, Idaho.

Seven months before the Waco standoff, Horiuchi shot and killed Weaver's wife, Vicki, in what the FBI called a tragic accident.

The state of Idaho later charged Horiuchi with manslaughter, but a federal judge threw out the case, saying the marksman had immunity as a federal employee acting within the scope of his job.

The Waco suit claims that FBI agents fired repeatedly at sect members to keep them in the compound on the final day--an allegation long denied by Reno and FBI Director Louis J. Freeh. An FBI spokesman had no comment this week, citing the pending trial, and Justice Department attorneys have called the claims "baseless."

"Numerous interviews, congressional hearings, official reports, color videos and photographs and other scrutiny support the conclusion that the FBI never fired a shot during the 51-day standoff at Waco," the Justice Department said in a statement issued two years ago after an Academy Award-nominated documentary, "Waco: The Rules of Engagement," raised the gunfire issue.

Smith said the allegations that the Davidians were fired upon are supported by "at least some evidence." He cited affidavits from two survivors, expert analyses of infrared videotapes, and an internal FBI document that reported an FBI agent heard gunshots coming from the sniper post Horiuchi commanded that morning in front of the compound.

Horiuchi stated that neither he nor anyone under his command fired their weapons, according to FBI documents. But Special Agent Charles M. Riley, another sniper on duty that day, reported he "heard shots fired" from Horiuchi's post. After this account surfaced during litigation in 1996, Riley retracted it as "inaccurate."

Other allegations of FBI gunfire at Waco are based on a Forward Looking Infrared (FLIR) videotape recorded by a government aircraft on April 19. Some experts have said it shows muzzle flashes directed at the compound, but FBI and Army officials said the camera was picking up sunlight reflected on broken glass and other debris.

For Clive Doyle, news of a trial was overshadowed by the dismissal of his claim for the death of his 18-year-old daughter, Shari. The judge said Doyle's suit was not properly served on the government.

"To the government I'm just a nobody," sighed Doyle, 58, who still follows the millennial, Bible-based teachings of Koresh. Paraphrasing Scripture, he added: "There's coming a day when all things will be revealed--it's called the judgment. Every secret thing will come into judgment."

CAPTION: The flags of Texas and the Bureau of Alcohol, Tobacco and Firearms fly over the remains of the Branch Davidian compound on April 19, 1993.

CAPTION: Clive Doyle erects a small cross on the third anniversary of the initial federal raid. (1996 photo)

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